



STIC Search Report

EIC 3700

STIC Database Tracking Number: 163594

TO: Paul Prebilic
Location: RND 6c03
Art Unit: 3738
Wednesday, August 24, 2005

Case Serial Number: 10/689579

From: Terry Solomon
Location: EIC 3700
RND 8b31
Phone: 272-4240

terrance.solomon@uspto.gov

Search Notes

Litigation found:

Cordis Corporation, et al v. Advanced Cardio Systems, et al (CLOSED) 98cv65

The following cases were consolidated:

Cordis Corporation, et al v. Advanced Cardio Systems, et al status: **OPEN** (97cv550)

Arterial Vascular, et al v. Cordis Corporation, et al status: **OPEN** (97cv700)

Sources:

Lexis/Nexis > Notice of Litigation & Case Summaries

Questel-Orbit > LitAlert

Courtlink > Updated Court Dockets

174246 (07) 5102417 April 7, 1992

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

5102417

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[Link to Claims Section](#)

April 7, 1992

Expandable intraluminal graft, and method and apparatus for implanting an expandable intraluminal graft

REEXAM-LITIGATE:

NOTICE OF LITIGATION

NOTICE OF LITIGATION Cordis Corporation v. Advanced Cardio Sys, Filed Oct. 3, 1997, D.C. Delaware, Doc. No. CA 97-550

NOTICE OF LITIGATION

NOTICE OF LITIGATION Arterial Vascular v. Cordis Corporation, Filed Dec. 26, 1997, D.C. Delaware, Doc. No. CA 97-700

NOTICE OF LITIGATION

NOTICE OF LITIGATION Cordis Corporation v. Advanced Cardio Sys, Filed Feb. 6, 1998, D.C. Delaware, Doc. No. CA 98- 65

REISSUE: October 20, 2003 - Reissue Application filed Ex. Gp.: 3738; Re. S.N. 10/689,579 (O.G. January 13, 2004)

CERT-CORRECTION: June 8, 1993 - a Certificate of Correction was issued for this Patent

APPL-NO: 174246 (07)

FILED-DATE: March 28, 1988

GRANTED-DATE: April 7, 1992

ASSIGNEE-AT-ISSUE: Expandable Grafts Partnership, San Antonio, Texas, United States (US), 02

ASSIGNEE-AFTER-ISSUE: September 8, 1989 - ASSIGNMENT OF ASSIGNORS INTEREST., EXPANDABLE GRAFTS PARTNERSHIP, P.O. BOX 690330, SAN ANTONIO, TX., 78296-0330, A TX. GENERAL PARTNERSHIP, Reel and Frame Number: 05169/0816
September 8, 1989 - ASSIGNMENT OF ASSIGNORS INTEREST., EXPANDABLE GRAFTS

PARTNERSHIP, P.O. BOX 690330, SAN ANTONIO, TX., 78296-0330, A TX. GENERAL
PARTNERSHIP, Reel and Frame Number: 05169/0814
March 24, 1999 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).,
CORDIS CORPORATION CORPORATE CENTER 5200 BLUE LAGOON DR. MIAMI FLORIDA
33101, Reel and Frame Number: 09833/0585

LEGAL-REP: Tobor, Ben D.

(C) QUESTEL 1994
QUESTEL.ORBIT (TM) 1998

Selected file: PLUSPAT
PLUSPAT - (c) Questel-Orbit, All Rights Reserved.
Comprehensive Worldwide Patents database

**** SS 1: Results 1**
PRT SS 1 MAX 1 LEGALALL

1 / 1 PLUSPAT - ©QUESTEL-ORBIT - image

Patent Number :

US5102417 A 19920407 [US5102417]

Title :

(A) Expandable intraluminal graft, and method and apparatus for
implanting an expandable intraluminal graft

Patent Assignee :

(A) EXPANDABLE GRAFTS PARTNERSHIP (US)

Patent Assignee :

Expandable Grafts Partnership, San Antonio TX [US]

Inventor(s) :

(A) PALMAZ JULIO C (US)

Application Nbr :

US17424688 19880328 [1988US-0174246]

Filing Details :

C.I.P. of US923798 19861103 [1986US-0923798]

C.I.P. of US796009 19851107 [1985US-0796009]

Continuation-in-part of: US4739762

Continuation-in-part of: US4733665

Priority Details :

US17424688 19880328 [1988US-0174246]

US79600985 19851107 [1985US-0796009]

Intl Patent Class :

(A) A61F-002/02 A61M-005/00

EPO ECLA Class :

A61F-002/06S2B

A61F-002/06S6N2

EPO ICO Class :

K61F-002/00W5

K61F-002/06P

K61F-002/06S16

US Patent Class :

ORIGINAL (O) : 606195000; CROSS-REFERENCE (X) : 604008000 604103050

604528000 623022260

Document Type :

Corresponding document

Citations :

US3599641; US3968800; US4076285; US4503569; US4553545; US4676241;

US4731054; US4733665; US4739762; GB1205743; GB2135585

"Self-Expanding Endovascular Graft: An Experimental Study in Dogs";

Yoshioka et al., AJR 151: 673-679, Oct. 1988.

"Expandable Intraluminal Graft: A Preliminary Study" Radiology, Jul.
1985 Paper Presented at 70th Scientific Assembly and Annual Meeting of
the Radiological Society of North America, Nov. 25, 1984, by Jolio C.
Palmaz et al.

"Transluminally-Placed Coil Spring Endarterial Tube Grafts"; Dotter
Investigative Radiology; Sep.-Oct. 1969.

"Non Surgical Placement of Arterial Endoprostheses: A New Technique
Using Nitinol wire"; Cragg et al., Radiology 147, 1983.

Tetsuya Yoshioka et al., "Self-Expanding Endovascular Graft: An Experimental Study in Dogs", ASR 151: 673-676, Oct. 1988.

Publication Stage :

(A) United States patent

Abstract :

A plurality of expandable and deformable intraluminal vascular grafts are expanded within a blood vessel by an angioplasty balloon associated with a catheter to dilate and expand the lumen of a blood vessel. The grafts may be thin-walled tubular members having a plurality of slots disposed substantially parallel to the longitudinal axis of the tubular members, and adjacent grafts are flexibly connected by at least one connector member.

1 / 1 LGST - ©EPO

Patent Number :

US5102417 A 19920407 [US5102417]

Application Number :

US17424688 19880328 [1988US-0174246]

Action Taken :

19890908 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: EXPANDABLE GRAFTS PARTNERSHIP, P.O. BOX 690330, SA; EFFECTIVE

DATE: 19890804

19890908 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: PALMAZ, JULIO C.; EFFECTIVE DATE: 19890804

19930608 US/CC-A

CERTIFICATE OF CORRECTION

19990324 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: CORDIS CORPORATION CORPORATE CENTER 5200 BLUE LAGO; EFFECTIVE

DATE: 19990217

19990324 US/AS02-A

ASSIGNMENT OF ASSIGNOR'S INTEREST

OWNER: EXPANDABLE GRAFTS PARTNERSHIP; EFFECTIVE DATE: 19990217

20040113 US/RF-A

REISSUE APPLICATION FILED

EFFECTIVE DATE: 20031020

Update Code :

2004-05

1 / 1 CRXX - ©CLAIMS/RRX

Patent Number :

5,102,417 A 19920407 [US5102417]

Patent Assignee :

Expandable Grafts Partnership

Actions :

19990324 REASSIGNED

ASSIGNMENT OF ASSIGNORS INTEREST

Assignor: EXPANDABLE GRAFTS PARTNERSHIP DATE SIGNED: 02/17/1999

Assignee: CORDIS CORPORATION CORPORATE CENTER 5200 BLUE LAGOON DR.
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Reel 009833/Frame 0585

Contact: TOBOR GOLDSTEIN & HEALEY, LLP BEN D. TOBOR 1360 POST OAK BLVD.
SUITE 2300 HOUSTON, TX 77056-3023

20031020 REISSUE REQUESTED
ISSUE DATE OF O.G.: 20040113
REISSUE REQUEST NUMBER: 10/689579
EXAMINATION GROUP RESPONSIBLE FOR REISSUEPROCESS: 3738

Reissue Patent Number:

1 / 3 LITA - ©Thomson Derwent

Accession Number :

P1998-11-10

File Segment :

PATENT (P)

Patent Number :

US4739762 19880426 (Utility)

Plaintiffs :

Cordis Corporation

Defendants :

Advanced Cardio Systems

Court :

DE

Docket Number :

CA 98-65

Filing Date :

1998-02-06

Action :

A complaint was filed.

Other Patents Nbrs :

US5102417

US5195984

2 / 3 LITA - ©Thomson Derwent

Accession Number :

P1998-02-05

File Segment :

PATENT (P)

Patent Number :

US4733665 19880329 (Utility)

Plaintiffs :

Arterial Vascular

Defendants :

Cordis Corporation

Court :

DE

Docket Number :

CA 97-700

Filing Date :
1997-12-26
Action :
A complaint was filed.
Other Patents Nbrs :
US4739762
US5102417
US5195984

3 / 3 LITA - ©Thomson Derwent
Accession Number :
P1997-46-07
File Segment :
PATENT (P)
Patent Number :
US4739762 19880426 (Utility)
Plaintiffs :
Cordis Corporation
Defendants :
Advanced Cardio System
Court :
DE
Docket Number :
CA 97-550
Filing Date :
1997-10-03
Action :
A complaint was filed.
Other Patents Nbrs :
US5102417

Session finished: 24 AUG 2005 Time 15:22:49
QUESTEL.ORBIS thanks you. Hope to hear from you again soon.

US District Court Civil Docket**U.S. District - Delaware
(Wilmington)****1:97cv700****Arterial Vascular, et al v. Cordis Corporation, et al****This case was retrieved from the court on Wednesday, August 24, 2005**

Date Filed: 12/26/1997	Class Code: PATENT, TRIALBRIEFING
Assigned To: Honorable Sue L Robinson	Closed: no
Referred To:	Statute: 28:1338
Nature of suit: Patent (830)	Jury Demand: Plaintiff
Cause: Patent Infringement	Demand Amount: \$0
Lead Docket: None	NOS Description: Patent
Other Docket: None	
Jurisdiction: Federal Question	

Litigants

Arterial Vascular Engineering, Inc
Plaintiff
[Term: 03/15/1999]

Medtronic Vascular, Inc Medtronic Vascular, Inc Also
Known as Medtronic Ave, Inc
Plaintiff

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Date	#	Proceeding Text
12/26/1997	1	COMPLAINT filed; Magistrate consent notice to pltf. FILING FEE \$ 150.00 RECEIPT # 119106 (sm) (Entered: 12/26/1997)
12/26/1997	--	SUMMONS(ES) issued for Cordis Corporation, Johnson and Johnson, Expandable Grafts (sm) (Entered: 12/26/1997)
12/26/1997	--	DEMAND for jury trial by Arterial Vascular (sm) (Entered: 12/26/1997)
12/26/1997	2	Report to Commissioner of Patents and Trademarks. Exit original. (sm) (Entered: 12/26/1997)
01/07/1998	3	CASE assigned to Judge Sue L. Robinson . Notice to all parties. (ntl) (Entered: 01/07/1998)
01/08/1998	4	RETURN OF SERVICE executed as to Cordis Corporation 1/8/98 Answer due on 1/28/98 for Cordis Corporation (lf) (Entered: 01/09/1998)
01/08/1998	5	RETURN OF SERVICE executed as to Johnson and Johnson 1/8/98 Answer due on 1/28/98 for Johnson and Johnson (lf) (Entered: 01/09/1998)
01/20/1998	6	RETURN OF SERVICE executed as to Expandable Grafts 1/15/98 Answer due on 2/4/98 for Expandable Grafts (lf) (Entered: 01/22/1998)
01/21/1998	7	AMENDED COMPLAINT by Arterial Vascular , (Answer due 2/2/98 for Expandable Grafts, for Johnson and Johnson, for Cordis Corporation) amending [1-1] complaint (lf) (Entered: 01/28/1998)
02/03/1998	8	CERTIFICATE OF SERVICE by Arterial Vascular; Amended complaint (lf) (Entered: 02/04/1998)
02/10/1998	9	STIPULATION with proposed order for deft to answer to amended complaint by 2/27/98 (lf) (Entered: 02/13/1998)

02/19/1998	--	So Ordered granting [9-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 02/25/1998)
02/27/1998	10	ANSWER to amended complaint and COUNTERCLAIM by Cordis Corporation, Johnson and Johnson (Attorney) against Arterial Vascular (lf) (Entered: 03/11/1998)
03/02/1998	11	ANSWER to amended complaint and COUNTERCLAIM by Expandable Grafts (Attorney) against Arterial Vascular (lf) (Entered: 03/11/1998)
03/09/1998	12	STIPULATION with proposed order responsive pleadings to be due by 3/31/98 (lf) (Entered: 03/11/1998)
03/10/1998	13	MOTION by Arterial Vascular with Proposed Order for Eric Maurer, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	14	MOTION by Arterial Vascular with Proposed Order for Scott Stempel, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	15	MOTION by Arterial Vascular with Proposed Order for Peter Boyle, Es.q to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	16	MOTION by Arterial Vascular with Proposed Order for Penelope Lister, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	17	MOTION by Arterial Vascular with Proposed Order for John Williamson, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	18	MOTION by Arterial Vascular with Proposed Order for William Wallace, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	19	MOTION by Arterial Vascular with Proposed Order for Richard Meyer, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/10/1998	20	MOTION by Arterial Vascular with Proposed Order for D. Michael Underhill, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)
03/11/1998	--	So Ordered granting [12-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/16/1998)
03/11/1998	--	So Ordered granting [20-1] motion for D. Michael Underhill, Esq. to Appear Pro Hac Vice, granting [19-1] motion for Richard Meyer, Esq. to Appear Pro Hac Vice, granting [18-1] motion for William Wallace, Esq. to Appear Pro Hac Vice, granting [17-1] motion for John Williamson, Esq. to Appear Pro Hac Vice, granting [16-1] motion for Penelope Lister, Esq. to Appear Pro Hac Vice, granting [15-1] motion for Peter Boyle, Es.q to Appear Pro Hac Vice, granting [14-1] motion for Scott Stempel, Esq. to Appear Pro Hac Vice, granting [13-1] motion for Eric Maurer, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/16/1998)
03/31/1998	21	ANSWER by Arterial Vascular to [11-2] counter claim (lf) (Entered: 04/06/1998)
03/31/1998	22	ANSWER by Arterial Vascular to [10-2] counter claim (lf) (Entered: 04/06/1998)
04/29/1998	23	Answer Brief Filed by Arterial Vascular in opposition to pltf's motion to bifurcate (Docketed in CA 97-550) (lf) (Entered: 04/30/1998)
05/21/1998	24	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 2nd rqst for production of documents and things to pltf's (nos. 74-80) (lf) (Entered: 05/22/1998)
11/05/1998	25	MOTION by Arterial Vascular with Proposed Order for Michele Van Patten Frank, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/06/1998)
11/09/1998	--	So Ordered granting [25-1] motion for Michele Van Patten Frank, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 11/10/1998)
11/25/1998	26	CERTIFICATE OF SERVICE by Johnson and Johnson; Re: Responses to Arterial Vascular Engineering, Inc's 1st rqst for production of documents and things (Nos. 1-61) (lf) (Entered: 12/01/1998)
11/25/1998	27	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Responses and objections to Arterial Vascular Engineering 3rd set of rqsts for production of documents and things (nos. 81-121) (lf) (Entered: 12/01/1998)
12/03/1998	28	NOTICE by Arterial Vascular to take deposition of Expandable Grafts Partnership on 12/9/98 (lf) (Entered: 12/04/1998)
12/03/1998	29	NOTICE by Arterial Vascular to take deposition of Cordis Corp. on 12/9/98 (lf) (Entered: 12/04/1998)
12/03/1998	30	AMENDED NOTICE by Arterial Vascular to take deposition of Expandable Grafts Partnership on 12/10/98 (lf) (Entered: 12/04/1998)

12/09/1998	31	NOTICE by Cordis Corporation to take deposition of Boston Scientific Corp and Scimed Life Systems, Inc. on 12/22/98 (lf) (Entered: 12/11/1998)
12/09/1998	32	NOTICE by Cordis Corporation to take deposition of Advanced Cardiovascular Systems, Inc. and Guidant Corp on 12/21/98 (lf) (Entered: 12/11/1998)
12/09/1998	33	NOTICE by Cordis Corporation to take deposition of Arterial Vascular Engineering on 12/30/98 (lf) (Entered: 12/11/1998)
01/13/1999	34	ORDER, general status cnf. scheduled for 1/28/99 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 01/14/1999)
02/16/1999	35	CERTIFICATE OF SERVICE by Cordis Corporation; Re: objections and responses to deft Arterial Vascular Engineering's 2nd set of interros (no. 18) (lf) (Entered: 02/17/1999)
03/04/1999	36	NOTICE by Cordis Corporation to take deposition of Arterial Vascular Engineering (lf) (Entered: 03/05/1999)
03/08/1999	37	MOTION by Arterial Vascular for Leave to File 2nd Amended complaint Answer Brief due 3/22/99 re: [37-1] motion (lf) (Entered: 03/11/1999)
03/12/1999	--	So Ordered granting [37-1] motion for Leave to File 2nd Amended complaint (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/15/1999)
03/12/1999	38	2nd AMENDED COMPLAINT by Arterial Vascular , (Answer due 3/22/99 for Expandable Grafts, for Johnson and Johnson, for Cordis Corporation) amending [7-1] amended complaint (lf) (Entered: 03/15/1999)
04/01/1999	39	MOTION by Medtronic AVE, Inc. with Proposed Order for Leave to File 3rd amended complaint (lf) (Entered: 04/06/1999)
04/15/1999	40	Answer Brief Filed by Cordis Corporation, Johnson and Johnson, Expandable Grafts [39-1] motion for Leave to File 3rd amended complaint - Reply Brief due 4/22/99 (lf) (Entered: 04/16/1999)
04/22/1999	41	STIPULATION with proposed order for pltf to serve and file reply brief on its motion for leave to file 3rd amended complaint by 5/6/99 (lf) (Entered: 04/26/1999)
04/27/1999	--	So Ordered granting [41-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/29/1999)
05/05/1999	42	STIPULATION with proposed order; for pltf to file its reply reply to its motion for leave to file third amended complaint by 5/20/99 (lf) (Entered: 05/07/1999)
05/10/1999	--	So Ordered granting [42-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 05/12/1999)
05/20/1999	43	STIPULATION with proposed order for pltf to file its reply brief on its motion for leave to file 3rd amended complaint by 6/9/99 (lf) (Entered: 05/24/1999)
05/24/1999	--	So Ordered granting [43-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 05/25/1999)
06/08/1999	44	CERTIFICATE OF SERVICE; Objections and reponses of Johnson & Johnson to deft Medtronic AVE, Inc's notice of deposition of Johnson and Johnson (lf) (Entered: 06/10/1999)
06/09/1999	45	Reply Brief Filed by Medtronic AVE, Inc. [39-1] motion for Leave to File 3rd amended complaint (SEALED) (lf) (Entered: 06/10/1999)
07/02/1999	46	MOTION by Cordis Corporation for Reconsideration of court's 6/18/99 memorandum opinion, order and memorandum order Answer Brief due 7/16/99 re: [46-1] motion (lf) (Entered: 07/06/1999)
07/02/1999	47	Opening Brief Filed by Cordis Corporation [46-1] motion for Reconsideration of court's 6/18/99 memorandum opinion, order and memorandum order - Answer Brief due 7/16/99 (lf) (Entered: 07/06/1999)
07/02/1999	48	Declaration of John Collins (lf) (Entered: 07/06/1999)
07/02/1999	49	Declaration of Lee Bendel (lf) (Entered: 07/06/1999)
07/13/1999	50	CERTIFICATE OF SERVICE by Johnson and Johnson objections and responses to Medtronic AVE Inc's 1st set of interros (nos. 1-12) (lf) (Entered: 07/14/1999)
07/26/1999	51	Answer Brief Filed by Medtronic AVE, Inc. [46-1] motion for Reconsideration of court's 6/18/99 memorandum opinion, order and memorandum order - Reply Brief due 8/2/99 (lf) (Entered: 07/27/1999)
07/26/1999	52	Letter dated 7/26/99 from Francis DiGiovanni to Judge Robinson; Re: filing brief in opposition to Cordis Motion for reagrgument (lf) (Entered: 07/27/1999)

08/10/1999	53	Letter to Judge Robinson from Steven Balick re related motions DI 39 in 97-700 & DI 510 in 97-550. (maw) (Entered: 08/16/1999)
08/12/1999	54	Letter to Judge Robinson from Patricia Rogowski in response to DI #53. (maw) (Entered: 08/16/1999)
10/28/1999	55	SCHEDULING ORDER setting Discovery cutoff 7/21/00 ; Deadline for filing dispositive motions 4/4/00 Pretrial conference for 3:00 10/12/00 ; Trial Date Deadline 9:00 11/1/00 ; Proposed Pretrial Order due on 10/6/00; conf. sched. for 9/7/00 at 10:00 re structure of trials; motions in limine due 9/28/00, with responses due 10/5/00;MATTER REF.TO MAGIS.-JUDGE THYNGE FOR SETTLEMENT; SEE ORDER FOR FURTHER DETAILS. (signed by Judge Sue L. Robinson) copies to: MPT, cnsl. (bkb) (Entered: 11/05/1999)
10/28/1999	--	Deadline updated; set In Chambers Conference for 10:00 9/7/00 , set Motion (In Limine) Filing deadline to 9/28/00 (bkb) (Entered: 11/05/1999)
11/08/1999	56	ORDER, set Telephone Conference for 9:00 11/22/99 (signed by Judge Mary P. Thyng) copies to: cnsl. (bkb) (Entered: 11/30/1999)
11/09/1999	57	Letter to Judge Robinson (11/9/99) from Steven J. Balick (bkb) (Entered: 11/30/1999)
11/15/1999	58	Letter to Judge Robinson (11/15/99) from Steven J. Balick -----SEALED (bkb) (Entered: 11/30/1999)
11/30/1999	59	STIPULATION with proposed order ext. till 12/20/99 time for parties to serve final rqsts. for adm. (bkb) (Entered: 12/09/1999)
12/03/1999	60	NOTICE by Boston Scientific & SciMed Life Systems to take deposition of Cordis Corp. on 12/13/99 at 9:30 a.m. (bkb) (Entered: 12/09/1999)
12/09/1999	--	So Ordered granting [59-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (bkb) (Entered: 12/15/1999)
12/21/1999	61	CERTIFICATE OF SERVICE by Boston Scientific & Scimed Life Systems re their; 1st set rqsts. adm. to Cordis and; 1st set rqsts. for adm. to Expandable Grafts Partnership. (bkb) (Entered: 12/22/1999)
12/22/1999	62	CERTIFICATE OF SERVICE re Medtronic AVE, Inc.'s rqsts. for. adm. to CORDIS & 2nd set rqsts. adm. to Expandable Grafts Partnership; AND depts' joint rqsts. for adm. to Cordis & to Expandable Grafts Partnership. (bkb) (Entered: 12/23/1999)
02/04/2000	63	ORDER, procedures to follow during discovery disputes (see order for details) (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/07/2000)
02/16/2000	64	Letter dated 2/16/00 from Steven Balick Esq. to Judge Robinson; Re: supplying court with expert reports for in camera review (lf) (Entered: 02/17/2000)
02/16/2000	65	ORDER, court having review the expert reports submitted by cnsl - by 2/18/00 pltf shall identify documents referred to by Dr. Collins, See order for details (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/17/2000)
03/10/2000	66	MOTION by Cordis Corporation to modify the briefing schedule for markman submissions and dispositive motions (lf) (Entered: 03/13/2000)
03/22/2000	69	NOTICE of withdrawal of claims based on US Patent no. 5,102,417 by Medtronic AVE, Inc. (lf) Modified on 03/24/2000 (Entered: 03/23/2000)
03/22/2000	68	Reply Brief Filed by Cordis Corporation, Expandable Grafts [66-1] motion to modify the briefing schedule for markman submissions and dispositive motions (lf) (Entered: 03/23/2000)
03/22/2000	67	ORDER granting in part, denying in part [39-1] motion for Leave to File 3rd amended complaint (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 03/24/2000)
03/22/2000	70	ORDER denying [46-1] motion for Reconsideration of court's 6/18/99 memorandum opinion, order and memorandum order (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 03/24/2000)
04/03/2000	--	So Ordered granting [66-1] motion to modify the briefing schedule for markman submissions and dispositive motions (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/05/2000)
04/04/2000	71	NOTICE of filing via Incorporation by reference all summary judgment motions in CA 97-550 SLR by Cordis Corporation, Johnson and Johnson, Expandable Grafts (lf) (Entered: 04/06/2000)
04/28/2000	72	STIPULATION with proposed order extending dispositive motions deadline and claims construction to 5/16/00 (lf) (Entered: 04/28/2000)
04/28/2000	--	So Ordered granting [72-1] stipulation (signed by Judge Sue L. Robinson) Notice to all

parties. (lf) (Entered: 04/28/2000)

05/16/2000 73 NOTICE of filing via Incorporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts (lf) (Entered: 05/22/2000)

05/25/2000 74 STIPULATION with proposed order to file amended answer and counterclaim (lf) (Entered: 05/26/2000)

05/26/2000 75 STIPULATION with proposed order to extend expert report schedule (lf) (Entered: 05/31/2000)

05/30/2000 -- So Ordered granting [74-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 05/31/2000)

05/30/2000 76 FOURTH AMENDED COMPLAINT by Medtronic AVE, Inc. , (Answer due 6/9/00 for Expandable Grafts, for Johnson and Johnson, for Cordis Corporation) amending [38-1] amended complaint (lf) (Entered: 05/31/2000)

05/31/2000 -- So Ordered granting [75-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/01/2000)

06/05/2000 77 STIPULATION with proposed order to extend the briefing schedule - all reply briefs to the dispositive motions and claim construction due 6/13/00; Medtronic reply brief due to motion to strike due 6/23/00 (lf) (Entered: 06/06/2000)

06/06/2000 -- So Ordered granting [77-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/07/2000)

06/06/2000 78 MOTION by Medtronic AVE, Inc. to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering any testimony on the Kula Declaration or twisting (lf) (Entered: 06/09/2000)

06/06/2000 79 Opening Brief Filed by Medtronic AVE, Inc. [78-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering any testimony on the Kula Declaration or twisting - Answer Brief due 6/20/00 (SEALED) (lf) (Entered: 06/09/2000)

06/06/2000 80 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [79-1] opening brief (SEALED) (lf) (Entered: 06/09/2000)

06/06/2000 81 Answer Brief Filed by Cordis Corporation [78-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering any testimony on the Kula Declaration or twisting - Reply Brief due 6/13/00 (SEALED) (lf) (Entered: 06/09/2000)

06/09/2000 82 STIPULATION and proposed order for deft to answer to 4th amended complaint by 6/23/00 (lf) (Entered: 06/14/2000)

06/13/2000 83 NOTICE of filing via corporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts (lf) (Entered: 06/14/2000)

06/13/2000 119 Reply Brief Filed by Medtronic AVE, Inc. in support of Medtronic AVE's motion for summary judgment of invalidity and unenforceability of claims 1,3, and 5 of the US PATent 5,902,332 (SEALED) (lf) (Entered: 10/26/2000)

06/13/2000 120 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [118-1] opening brief; Vol. 1 of 2 (SEALED) (lf) (Entered: 10/26/2000)

06/13/2000 121 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [116-1] answer brief; Vo 2 of 2 (SEALED) (lf) (Entered: 10/26/2000)

06/14/2000 -- So Ordered granting [82-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/19/2000)

06/23/2000 84 Reply Brief Filed by Medtronic AVE, Inc. [78-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering any testimony on the Kula Declaration or twisting (SEALED) (lf) (Entered: 06/27/2000)

06/23/2000 85 ANSWER to fourth amended Complaint for declaratory relief of patent invalidity, unenforceability and noninfringement of deft Medtronic AVE, Inc. by Expandable Grafts (Attorney), (lf) (Entered: 06/27/2000)

06/23/2000 86 ANSWER to Fourth Amended Complaint for delcaratory relief and iniinfringement of deft Medtronic by Cordis Corporation (Attorney), (lf) (Entered: 06/27/2000)

07/28/2000 87 STIPULATION with proposed order regarding dates by which certain rebuttal expert reports on damages are due (lf) (Entered: 08/01/2000)

08/01/2000 -- So Ordered granting [87-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/02/2000)

08/08/2000 88 STIPULATION and proposed order regarding date by which Medtronic AVE's rebuttal expert report is due (lf) (Entered: 08/10/2000)

08/10/2000	--	So Ordered granting [88-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/15/2000)
08/21/2000	89	MOTION by Medtronic AVE, Inc. with Proposed Order for Gerald Konkell, Esq. to Appear Pro Hac Vice (lf) (Entered: 08/24/2000)
08/24/2000	--	So Ordered granting [89-1] motion for Gerald Konkell, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/29/2000)
09/29/2000	90	MOTION by Medtronic AVE, Inc. in Limine (no. 1) to exclude portions of the rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering testimony on the Kula Declaration or twisting (lf) (Entered: 09/29/2000)
09/29/2000	91	MOTION by Medtronic AVE, Inc. in Limine (no. 2) to preclude Cordis from using computer generated "morphing" animations and from using the term "building blocks" or its equivalent, at trial (lf) (Entered: 09/29/2000)
09/29/2000	92	Opening Brief Filed by Medtronic AVE, Inc. [91-1] motion in Limine (no. 2) to preclude Cordis from using computer generated "morphing" animations and from using the term "building blocks" or its equivalent, at trial - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	93	Exhibit F (video tape) to Medtronic's opening brief motion in limine (no.2) (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	94	MOTION by Medtronic AVE, Inc. in Limine (no.3) to preclude evidence in the liability trial relating to pre-litigation communications and settlements (lf) (Entered: 09/29/2000)
09/29/2000	95	Opening Brief Filed by Medtronic AVE, Inc. [94-1] motion in Limine (no.3) to preclude evidence in the liability trial relating to pre-litigation communications and settlements - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	96	MOTION by Medtronic AVE, Inc. in Limine (no.4) to preclude pltf Cordis Corp. from offering the testimony of Howard Rudge (lf) (Entered: 09/29/2000)
09/29/2000	97	Opening Brief Filed by Medtronic AVE, Inc. [96-1] motion in Limine (no.4) to preclude pltf Cordis Corp. from offering the testimony of Howard Rudge - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	98	MOTION by Medtronic AVE, Inc. with Proposed Order in Limine (no. 5) to limit the accused products (lf) (Entered: 09/29/2000)
09/29/2000	99	Opening Brief Filed by Medtronic AVE, Inc. [98-1] motion in Limine (no. 5) to limit the accused products - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	100	MOTION by Medtronic AVE, Inc. in Limine (no.6) to preclude testimony of Raymond Kaden (lf) (Entered: 09/29/2000)
09/29/2000	101	Opening Brief Filed by Medtronic AVE, Inc. [100-1] motion in Limine (no.6) to preclude testimony of Raymond Kaden - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	102	MOTION by Medtronic AVE, Inc. in Limine (no.7) to preclude pltf from offering testimony of Creighton Hoffman relating to lost profits (lf) (Entered: 09/29/2000)
09/29/2000	103	Opening Brief Filed by Medtronic AVE, Inc. [102-1] motion in Limine (no.7) to preclude pltf from offering testimony of Creighton Hoffman relating to lost profits - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	104	MOTION by Medtronic AVE, Inc. in Limine (no.8) to preclude pltf from introducing any evidence or testimony relating to damages accruing to Ethicon endo-surgery Inc. up to and including 4/27/97 (lf) (Entered: 09/29/2000)
09/29/2000	105	Opening Brief Filed by Medtronic AVE, Inc. [104-1] motion in Limine (no.8) to preclude pltf from introducing any evidence or testimony relating to damages accruing to Ethicon endo-surgery Inc. up to and including 4/27/97 - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)
09/29/2000	106	MOTION by Medtronic AVE, Inc. for Join BSC's motions in limine filed on 9/28/00 (lf) (Entered: 09/29/2000)
09/29/2000	113	NOTICE of Filing Incorporation by reference by Cordis Corporation, Johnson and Johnson ; Filings in 97-550 (lf) (Entered: 10/12/2000)
10/06/2000	108	NOTICE of filing via Incorporated y reference by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	109	Answer Brief Filed by Medtronic AVE, Inc. to Cordis' motions in limine (SEALED) (lf) (Entered: 10/11/2000)

10/06/2000	110	NOTICE of information that Medtronic intends to rely on at trial by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	111	NOTICE of Proposed special verdict form by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	112	Proposed Voir dire questions by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/10/2000	107	NOTICE of FILING VIA INCORPORATION BY REFERENCE by Cordis Corporation, Johnson and Johnson, Expandable Grafts; all documents filed in 97-550 (lf) (Entered: 10/11/2000)
10/12/2000	114	ORDER denying [78-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. Collins from offering any testimony on the Kula Declaration or twisting (signed by Judge Sue L. Robinson) copies to: (lf) (Entered: 10/16/2000)
10/13/2000	115	SUPPLEMENTAL NOTICE of by Medtronic AVE, Inc. to Cordis (lf) (Entered: 10/16/2000)
10/23/2000	116	Answer Brief Filed by Medtronic AVE, Inc. response to Cordis Corp. motion to enter judgment (lf) (Entered: 10/24/2000)
10/25/2000	117	MOTION by Medtronic AVE, Inc. in Limine (no 10) to preclude testimony of mark Wholey, M.D. based on recently obtained deposition evidence Answer Brief due 11/8/00 re: [117-1] motion (lf) (Entered: 10/26/2000)
10/25/2000	118	Opening Brief Filed by Medtronic AVE, Inc. [117-1] motion in Limine (no 10) to preclude testimony of mark Wholey, M.D. based on recently obtained deposition evidence - Answer Brief due 11/8/00 (SEALED) (lf) (Entered: 10/26/2000)
11/01/2000	--	TRANSCRIPT filed for dates of 10/30/00-----SEE DI 919, CA 97-550 (bkb) (Entered: 11/03/2000)
11/06/2000	122	ORDER denying as moot [117-1] motion in Limine (no 10) to preclude testimony of mark Wholey, M.D. based on recently obtained deposition evidence (signed by Judge Sue L. Robinson) copies to: counsel (bkb) (Entered: 11/08/2000)
11/07/2000	123	RESPONSE (OBJECTIONS) by Cordis Corporation in opposition to the introduction of evidence regarding the Boneau '331 and Birdsall '152 patents (bkb) (Entered: 11/08/2000)
11/09/2000	124	MEMORANDUM by Medtronic AVE, Inc. in opposition to [123-1] opposition response (bkb) (Entered: 11/13/2000)
11/14/2000	125	RESPONSE by Medtronic AVE, Inc. in support of admissibility of Cordis's withdrawal of US Patent #5,102,417 from suit with prejudice. (bkb) (Entered: 11/17/2000)
11/14/2000	--	MOTION in open court (CA 97-550 trial) by Medtronic AVE, Inc. for Judgment as a Matter of Law re: [0-0] motion (bkb) (Entered: 11/17/2000)
11/14/2000	126	Opening Brief Filed by Medtronic AVE, Inc. [0-0] motion for Judgment as a Matter of Law - Answer Brief due 11/28/00 (bkb) (Entered: 11/17/2000)
11/15/2000	127	BENCH MEMORANDUM by Cordis Corporation on Doctrine of Equivalents (bkb) (Entered: 11/17/2000)
11/17/2000	128	Proposed SUPPLEMENTAL Jury instructions by Medtronic AVE, Inc. (bkb) (Entered: 11/20/2000)
11/17/2000	129	MEMORANDUM by Medtronic AVE, Inc. on prosecution history estoppel (bkb) (Entered: 11/20/2000)
11/21/2000	--	JURY VERDICT for Cordis Corporation & against Medtronic AVE, Inc.; See DI 955 in CA 97-550 for document. (bkb) (Entered: 11/22/2000)
11/21/2000	130	MOTION by Medtronic AVE, Inc. with Proposed Order for David Leichtman to Appear Pro Hac Vice re: [130-1] motion (bkb) (Entered: 11/22/2000)
11/27/2000	--	So Ordered granting [130-1] motion for David Leichtman to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (bkb) (Entered: 11/28/2000)
12/08/2000	131	NOTICE of change of address for local counsel by Cordis Corporation (bkb) (Entered: 12/20/2000)
12/19/2000	132	MEMORANDUM by Medtronic AVE, Inc. in support of the admissibility of evidence regarding the availability of Microstent I as a non-infringing substitute. (bkb) (Entered: 12/20/2000)
12/19/2000	133	MEMORANDUM by Medtronic AVE, Inc. in support of the admissibility of evidence regarding the Microstent I (bkb) (Entered: 12/20/2000)
12/21/2000	134	MEMORANDUM by Medtronic AVE, Inc. in support of its position re: fact witness testimony on reasonable royalty rate in hypothetical negotiation (bkb) (Entered: 12/27/2000)
12/22/2000	135	Opening Brief Filed by Medtronic AVE, Inc. [0-0] motion for Judgment as a Matter of Law as to

damages accruing to Cordis prior to 10/21/97. - Answer Brief due 1/5/01 (bkb) Modified on 12/27/2000 (Entered: 12/27/2000)

12/22/2000 136 Opening Brief Filed by Medtronic AVE, Inc. [0-0] motion for Judgment as a Matter of Law w/respect to ACS stents being non-infringing substitutes - Answer Brief due 1/5/01 (bkb) (Entered: 12/27/2000)

12/27/2000 137 STIPULATION with proposed order amending Protective Order (dab) (Entered: 12/29/2000)

01/03/2001 -- So Ordered granting [137-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (maw) (Entered: 01/09/2001)

01/05/2001 138 Letter to Judge Robinson from Ms. Rogowski re matters to be discussed at 1/8/01 tele-conf. (bkb) (Entered: 01/10/2001)

01/29/2001 139 Letter to D.Clk.Strickler from Ms. Rogowski re: request for certain exhibits to be placed under seal. (bkb) (Entered: 01/29/2001)

01/30/2001 140 Letter to Judge Robinson from Ms. Rogowski re: discovery dispute & 01/31/01 8:00 a.m. teleconf. (bkb) (Entered: 01/30/2001)

01/30/2001 141 Letter to Judge Robinson from Ms. Rogowski re: matters and witnesses AVE plans to produce at inequitable conduct hearing. (bkb) (Entered: 01/30/2001)

01/30/2001 142 Letter to Judge Robinson from Ms. Rogowski re: response to Mr. Balick's ltr. of 01/25/01. (rld) (Entered: 02/05/2001)

03/14/2001 143 Letter to Judge Robinson from Ms. Rogowski enclosing letter from William Wallace, III to the Court dated 3/13/01; and 1/3/01 article from the Dover Sun-Times. (rld) (Entered: 03/15/2001)

03/15/2001 144 Stipulated Post-Trial Brief Schedule Filed . (rld) (Entered: 03/16/2001)

03/16/2001 145 Renewed MOTION by Medtronic AVE, Inc. with Proposed Order for Judgment as a Matter of Law re infringement claims Answer Brief due 4/17/01 re: [145-1] motion (rld) (Entered: 03/19/2001)

03/16/2001 146 MOTION by Medtronic AVE, Inc. with Proposed Order for New Trial Answer Brief due 4/17/01 re: [146-1] motion (rld) (Entered: 03/19/2001)

03/16/2001 147 Opening Brief Filed by Medtronic AVE, Inc. [146-1] motion for New Trial - Answer Brief due 4/17/01---SEALED--- (rld) (Entered: 03/19/2001)

03/16/2001 151 JUDGMENT for Cordis Corporation against Medtronic AVE, Inc. to the issues of infringement and invalidity on claims 23, 51 and 54 of the '762 patent and claims 1 and 3 of the '984 patent.(signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/20/2001)

03/16/2001 -- So Ordered granting [144-1] brief schedule stipulation reset Memorandum in Opposition Deadline to 4/13/01 re: [150-1] trial brief , and set Memorandum in Support Deadline to 4/27/01 re: [150-1] trial brief , and reset Answer Brief Deadline to 4/17/01 re: [149-1] motion for Judgment as a Matter of Law re infringement claims, 4/17/01 re: [146-1] motion for New Trial, 4/17/01 re: [145-1] motion for Judgment as a Matter of Law re infringement claims , and reset Reply Brief Deadline to 5/8/01 re: [149-1] motion for Judgment as a Matter of Law re infringement claims, 5/8/01 re: [146-1] motion for New Trial, 5/8/01 re: [145-1] motion for Judgment as a Matter of Law re infringement claims , and set Notice of Compliance deadline to 4/18/01 re Opening brief by Cordis on Issues related to an Injunction and set answer brief deadlines to 5/16/01 and reply brief deadlines to 5/30/01 re Issues related to an Injunction. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 03/26/2001)

03/19/2001 148 Opening Brief Filed by Medtronic AVE, Inc. [145-1] motion for Judgment as a Matter of Law re infringement claims - Answer Brief due 4/17/01---SEALED--- (rld) (Entered: 03/19/2001)

03/19/2001 149 Duplicate of DI 145 filed on 3/16/01---MOTION by Medtronic AVE, Inc. with Proposed Order for Judgment as a Matter of Law re infringement claims Answer Brief due 4/17/01 re: [149-1] motion (rld) Modified on 04/23/2001 (Entered: 03/19/2001)

03/19/2001 150 POST TRIAL BRIEF by Medtronic AVE, Inc. relating to the unenforceability of the '762 and '984 patents due to inequitable conduct. (rld) (Entered: 03/19/2001)

03/22/2001 152 Letter to Judge Robinson from Mr. Balick in opposition to to AVE's request (in DI 1039 of case 97-550) re sealing of certain documents. (originally file stamped on 3/20/01) (rld) (Entered: 03/23/2001)

03/28/2001 153 Letter to Judge Robinson from Ms. Rogowski re Court's placement of certain exhibits and testimony under seal as set forth in their 1/29/01 letter. (rld) (Entered: 03/28/2001)

04/16/2001 -- FILED IN CIVIL CASE #97-550; SEE DI #1077 IN 97-550 FOR ACTUAL DOCUMENT; Answering Brief by Cordis Corporation, Johnson and Johnson, Expandable Grafts in opposition to [150-1]

trial brief; reply brief due 4/27/01. (rld) Modified on 04/19/2001 (Entered: 04/19/2001)

04/17/2001 -- Answer Brief Filed by Cordis Corporation, Johnson and Johnson, Expandable Grafts [145-1] motion for Judgment as a Matter of Law re infringement claims - Reply Brief due 5/8/01--- Document filed in civil case #97-550-SLR, DI 1080; FILED VIA REFERENCE OF INCORPORATION IN THIS CASE THEREFORE see file 97-550 for actual document. (rld) (Entered: 04/23/2001)

04/17/2001 -- Answer Brief Filed by Cordis Corporation, Johnson and Johnson, Expandable Grafts [146-1] motion for New Trial - Reply Brief due 5/8/01; filed in civil case #97-550, DI 1081; FILED VIA REFERENCE OF INCORPORATION IN THIS CASE THEREFORE see file for 97-550 for actual document. (rld) (Entered: 04/23/2001)

04/19/2001 -- MOTION by Cordis Corporation for entry of jgm. including for Permanent Injunctions Answer Brief due 5/16/01 re: [0-1] motion, Answer Brief due 5/16/01 re: [0-2] motion; ACTUAL MOTION IS FILED IN CIVIL CASE #97-550, DI # 1084; filed via incorporation in this case thus no docket number is given. (rld) (Entered: 04/24/2001)

04/19/2001 -- Opening Brief Filed by Cordis Corporation [0-1] motion for entry of jgm. - Answer Brief due 5/16/01, [0-2] motion for Permanent Injunctions - Answer Brief due 5/16/01; ACTUAL OPENING BRIEF IS FILED IN CIVIL CASE # 97-550, DI 1085; filed via incorporation in this file thus no docket number is given. (rld) (Entered: 04/24/2001)

04/24/2001 154 Letter to Clerk DiMeo from Mr. Balick enclosing revised caption page for Cordis' combined answering brief in opp. to post hearing briefs of AVE and BSC (DI 1077 in CA #97-550). (rld) (Entered: 04/25/2001)

04/24/2001 155 NOTICE of Filing via Incorporation by Reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts re Docket Items 1077, 1080, 1081 & 1084 filed in C.A. #97-550 and filed with a zero docket item number in this case. (rld) (Entered: 04/25/2001)

05/03/2001 -- NOTICE of filing via incorporation by reference of a Stipulated Post-Trial Briefing Schedule filed in civil case 97-550 as DI 1087; see that file for the actual stip. (rld) (Entered: 05/04/2001)

05/03/2001 -- STIPULATION re Post-Trial Briefing Schedule; with proposed order; Filed in Civil Case 97-550 as DI 1087; see that file for the actual document and see entry above for further details. (rld) (Entered: 05/04/2001)

05/07/2001 -- So Ordered granting [0-1] stipulation reset Memorandum in Support Deadline to 5/7/01 re: [150-1] trial brief (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 05/11/2001)

05/08/2001 156 MEMORANDUM by Medtronic AVE, Inc. in support of [150-1] trial brief re inequitable conduct. (rld) (Entered: 05/11/2001)

05/08/2001 157 STIPULATION for extension of time to file reply briefs on JMOL and New Trial Motions with proposed order (rld) (Entered: 05/11/2001)

05/11/2001 -- So Ordered granting [157-1] stipulation extension of time for filing of reply briefs on JMOL and New Trial Motions till 5/11/01 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 05/11/2001)

05/11/2001 158 Reply Brief Filed by Medtronic AVE, Inc. [146-1] motion for New Trial---SEALED--- (rld) (Entered: 05/15/2001)

05/11/2001 159 Reply Brief Filed by Medtronic AVE, Inc. [145-1] motion for Judgment as a Matter of Law re infringement claims---SEALED--- (rld) (Entered: 05/15/2001)

05/16/2001 160 Answer Brief Filed by Medtronic AVE, Inc. [0-1] motion for entry of jgm. - Reply Brief due 5/23/01, [0-2] motion for Permanent Injunctions - Reply Brief due 5/23/01---SEALED--- (original motion is filed in CA 97-550; see motion entry on this docket for further details.) (rld) (Entered: 05/18/2001)

05/31/2001 161 STIPULATION to extend Cordis' reply brief deadline on DI 1084 in CA 97-550; with proposed order (rld) (Entered: 06/05/2001)

06/01/2001 162 NOTICE of filing via Incorporation by Reference of DI 1103 in CA No. 97-550, "Combined Reply Brief in Support of Cordis' Motion for Entry of JGM., Including a Permanent Injunction, Against AVE and BSC; by Cordis Corporation, Johnson and Johnson, Expandable Grafts---SEE CA NO. 97-550, DI 1103 FOR ACTUAL DOCUMENT. (rld) (Entered: 07/09/2001)

06/06/2001 -- So Ordered granting [161-1] stipulation; Cordis' reply brief to DI 1084 filed in CA 97-550 is due 6/1/01 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 06/06/2001)

08/22/2001 163 STIPULATION for US Patent '303 (defts.' exhibit #11759-A) to be returned to defts. and the attached copy to the patent is to be substituted. (rld) (Entered: 08/22/2001)

08/23/2001 -- So Ordered granting [163-1] stipulation; defts.' exhibit #11759-A shall be returned to defts. BSC and Scimed; a copy of the exhibit shall be substituted in the Court's file. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 08/23/2001)

02/14/2002 164 Letter to Judge Robinson from P. Rogowski re Fed. Cir. recent decision in Intermatic, Inc. (rld) (Entered: 02/15/2002)

03/28/2002 165 OPINION (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/28/2002)

03/28/2002 166 ORDER denying [0-1] motion for entry of jgm. and denying [0-2] motion for Permanent Injunctions as to AVE and denying without prejudice to renew as to BSC upon conclusion of the new BSC damages trial; mootng [146-1] motion for New Trial, granting [145-1] motion for Judgment as a Matter of Law re infringement claims (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/28/2002)

03/28/2002 -- Case closed (rld) (Entered: 04/12/2002)

04/10/2002 167 STIPULATION Amending Protective Order with proposed order (rld) (Entered: 04/11/2002)

04/11/2002 168 MOTION by Medtronic AVE, Inc. for Reconsideration of [166-1] order Answer Brief due 4/25/02 re: [168-1] motion (rld) (Entered: 04/15/2002)

04/11/2002 -- Case reopened (rld) (Entered: 05/17/2002)

04/12/2002 -- So Ordered granting [167-1] stipulation amending the prot. order to include the law firm of Robins, Kaplan, Miller & Ciresl, LLP as outside cnsl. for Medtronic (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/12/2002)

04/16/2002 169 NOTICE of filing via incorporation by reference of DI#'s 1133, 1134, 1135, and 1136 in CA No. 97-550 by Cordis Corporation, Johnson and Johnson, Expandable Grafts (rld) (Entered: 04/19/2002)

04/23/2002 170 Answer Brief Filed by Medtronic AVE, Inc. to BSC's Motion for reconsideration of its Motion for a New Trial. (rld) (Entered: 04/24/2002)

04/25/2002 171 Answer Brief Filed by Medtronic AVE, Inc. in opposition to Cordis's Renewed Motion for Entry of Jgm. Dismissing its claims agst. AVE on the '332 patent. (Motion is filed in CA NO. 97-550). (rld) (Entered: 04/26/2002)

04/25/2002 172 Answer Brief Filed by Medtronic AVE, Inc. in opposition to Cordis's Motion for an Order Under Fed.R.Civ.P.54(b) directing the entry of jgm. on Cordis's claims agst. AVE (motion is filed in CA NO. 97-550). (rld) Modified on 04/26/2002 (Entered: 04/26/2002)

04/25/2002 173 STIPULATION to extend time for Cordis for respond to Medtronic's motion for reconsideration, with proposed order (rld) (Entered: 04/26/2002)

04/29/2002 -- So Ordered granting [173-1] stipulation reset Answer Brief Deadline to 5/3/02 re: [168-1] motion for Reconsideration of [166-1] order (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/29/2002)

05/02/2002 174 NOTICE of Filing Via Incorporation by Reference of (1) reply brief to Cordis' renewed motion for entry of jgm. on Cordis' claims agst. AVE based on the '332 Patent; and (2) reply brief to Cordis' motion "in the alternative, for an order under Fed.R.Civ.P.54(b) directing entry of jgm. on Cordis' claims agst. AVE by Cordis Corporation, Johnson and Johnson, SEE DI#1148 and #1149 in CA No. 97-550-SLR for these documents. Expandable Grafts (rld) (Entered: 05/07/2002)

05/03/2002 175 NOTICE of Filing Via Incorporation by Reference of Cordis' answering brief in opposition to AVE's Motion for Reconsideration of Its Motion for a New Trial by Cordis Corporation, Johnson and Johnson, Expandable Grafts; SEE DI #1150 in CA NO. 97-550-SLR for this document. (rld) (Entered: 05/07/2002)

05/10/2002 176 Reply Brief Filed by Medtronic AVE, Inc. [168-1] motion for Reconsideration of [166-1] order (rld) (Entered: 05/13/2002)

05/15/2002 177 MEMORANDUM ORDER granting [168-1] motion for Reconsideration of [166-1] order; AVE's motion for a new trial is granted in part and denied in part; new trial on infringement of the "substantially uniform thickness" limitation is granted in the event that the Federal Circuit reverses the court's grant of jgm. as a matter of law; SEE Order for further details. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) Modified on 05/17/2002 (Entered: 05/17/2002)

05/15/2002 178 JUDGMENT for Medtronic AVE, Inc. against Cordis Corporation, Johnson and Johnson, Expandable Grafts with respect to AVE's Infringement of claims 23, 51, and 54 of the U.S. Patent '762 and of claims 1 and 3 of the U.S. Patent '984; JGM. is entered in favor of Cordis and agst. AVE with respect to the validity of claims 23, 51 and 54 of the '762 Patent, of claims 1 and 3 of the '984 patent, and with respect to the enforceability of the '762 and '984 patents; JGM. is entered in favor of AVE and agst. Cordis with respect to AVE's Infringement of claims 1,

3, and 5 of the U.S. Patent '332 and of claims of U.S. Patent '417; it is further ordered that Cordis shall pay AVE its cost incurred in defending Cordis' claims based on the '762, '984, '332, and '417 patents; there is no just cause for delay in entering jgm. in favor of AVE. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 05/17/2002)

05/17/2002 -- Case closed (rld) (Entered: 05/17/2002)

06/13/2002 179 NOTICE OF APPEAL by Cordis Corporation [178-1] judgment order, [177-1] order . Time: 4:06 Fee Status: unpaid Appeal record due on 7/15/02 (paid in CA NO. 97-550 only). (rld) (Entered: 06/14/2002)

06/17/2002 -- RECEIPT # 132557 in the amt. of \$105.00; paid by Ashby & Geddes for appeal. (rld) (Entered: 06/17/2002)

06/18/2002 -- Notice of appeal and certified copy of docket to Federal Circuit: [179-1] appeal by Cordis Corporation (els) (Entered: 06/18/2002)

06/18/2002 -- copies to the Honorable Sue L. Robinson, Steven J. Balick Court Reporters and Patricia Smink Rogowski. (els) (Entered: 06/18/2002)

06/25/2002 180 Transcript requested [179-1] appeal by Cordis Corporation; a transcript is already on appeal. (rld) (Entered: 06/25/2002)

06/26/2002 181 NOTICE OF APPEAL by Medtronic AVE, Inc. [178-1] judgment order, [177-1] order, [166-1] order, [165-1] order . Time: 4:22 Fee Status: unpaid Appeal record due on 7/26/02 (rld) (Entered: 07/01/2002)

06/28/2002 -- NOTICE of Docketing ROA from FEDERAL CIRCUIT Re: [179-1] appeal by Cordis Corporation FED. CIR. NUMBER: 02-1458 (rld) (Entered: 07/03/2002)

07/01/2002 -- RECEIPT # 132630 for \$105.00 (Connolly Bove) (rld) (Entered: 07/02/2002)

07/03/2002 182 Letter to Clerk from P. Rogowski enclosing DI #183. (rld) (Entered: 07/03/2002)

07/03/2002 183 Transcript requested [181-1] appeal by Medtronic AVE, Inc.; Already on file. (rld) (Entered: 07/03/2002)

07/08/2002 -- Certified and transmitted certified list of docket entries in lieu of record on appeal to Federal Court of Appeals: [179-1] appeal by Cordis Corporation; exit certified copies of docket entries indicating record complete for appeal purposes. (els) (Entered: 07/08/2002)

07/09/2002 -- Notice of appeal and certified copy of docket to Federal Circuit: [181-1] appeal by Medtronic AVE, Inc. (els) (Entered: 07/09/2002)

07/09/2002 -- copies to the Honorable Sue L. Robinson, Steven J. Balick, Patricia Smink Rogowski and Court Reporters. (els) (Entered: 07/09/2002)

07/15/2002 -- NOTICE of Docketing ROA from FEDERAL CIRCUIT Re: [181-1] appeal by Medtronic AVE, Inc. FEDERAL CIRCUIT NUMBER: 02-1482 (rld) (Entered: 07/16/2002)

10/14/2003 184 Letter to Judge Robinson from S. Balick responding to Ms. Loudon's letter (D.I. # 1164 in CA. No. 97-550-SLR) of 10/10/03 (fmt) (Entered: 10/15/2003)

10/14/2003 -- Case reopened (rld) (Entered: 10/16/2003)

10/14/2003 185 NOTICE of filing via incorporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts of 1) Motion for entry of jgm. agst. AVE; and 2) opening brief in support of motion (D.I. 1166 and 1167 in CA NO. 97-550-SLR) (rld) (Entered: 10/16/2003)

10/14/2003 -- JUDGMENT OF USCA (certified copy) Re: [181-1] appeal, [179-1] appeal; reversed and remanded; JGM. AND OPINION FILED IN CA NO. 97-550-SLR D.I. 1170 AND 1171. (rld) (Entered: 10/16/2003)

10/15/2003 188 NOTICE of Substitution of Cnsl. and Name Change (document not signed by current cnsl. for pltf. thus substitution cannot be docketed until the deficiency is corrected) (rld) (Entered: 10/21/2003)

10/17/2003 186 STIPULATION re briefing schedule for Cordis Corporation's Motion for Entry of Jgm.; with proposed order (fmt) (Entered: 10/20/2003)

10/21/2003 187 Notice of Deficiency from the court to P. Bangle of Morris Nichols re Ntc. of Substitution of Cnsl. filed on 10/15/03 which lacks the signature of current cnsl. P. Rogowski, Connolly Bove. (rld) (Entered: 10/21/2003)

10/22/2003 -- So Ordered granting [186-1] stipulation pltf. shall file answering brief to D.I. 185 by 11/11/03; deft. shall file reply by 12/2/03 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/22/2003)

10/31/2003 189 **Terminated attorney Patricia Smink Rogowski for Arterial Vascular, attorney Patricia Smink Rogowski for Arterial Vascular, attorney Patricia Smink Rogowski for Arterial Vascular Notice of

attorney appearance for Medtronic AVE, Inc. by Philip Henry Bangle; and name change from Medtronic AVE to Medtronic Vascular, Inc. (rld) Modified on 10/31/2003 (Entered: 10/31/2003)

11/12/2003 190 SEALED Answer Brief Filed by Medtronic Vascular In Opposition to Cordis' Motion for Entry of Judgment (fmt) (Entered: 11/14/2003)

11/14/2003 191 Letter to Judge Robinson from K. Jacobs Loudon requesting oral argument on Cordis' Motion for Entry of Jgm. against AVE (D.I. # 1166); briefing on Motion is scheduled to be completed on 12/2/03 (fmt) (Entered: 11/17/2003)

11/14/2003 192 Notice of Deficiency from the court to Karen Jacobs Loudon; no original signature on D.I. # 191; letter was captioned with 97-550-SLR and 97-700-SLR; Need original letter for 97-700-SLR (fmt) (Entered: 11/17/2003)

11/18/2003 -- Original of D.I. # 191 received; deficiency cleared (fmt) (Entered: 11/19/2003)

12/03/2003 193 NOTICE of Filing Via Incorporation by Reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts; a Reply Brief in Further Support of Cordis' Motion for Entry of Jgm. in Cordis' Favor Against AVE was filed in C.A. No. 97-550-SLR (D.I. # 1185) and also bears the caption of this action (fmt) (Entered: 12/04/2003)

12/15/2003 194 NOTICE of Filing by Incorporation by Reference by Medtronic Vascular; the following papers in 97-550-SLR: 1. Medtronic Vascular's Surreply in Opposition to Cordis' Motion for Entry of Jgm. (D.I. # 1188); 2. Declaration of Jeffrey W. Allen (D.I. # 1190); and 3. Declaration of Henry Piehler (D.I. # 1189) (fmt) (Entered: 12/19/2003)

01/29/2004 195 ORDER effective immediately the court will not consider applications and requests submitted by letter or in a form other than a motion, absent express approval by the court; no telephone calls are to be made to chambers; emergency matters should be emailed to the court at the address provide; no attachments shall be submitted with said emails. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 01/29/2004)

02/17/2004 196 MEMORANDUM ORDER, set in-person Status Conference for 2:00 3/22/04 on or before 3/15/04 parties will submit memoranda of law indicating what, if any, issues are left to be resolved in light of court's claim construction (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 02/17/2004)

03/15/2004 197 NOTICE of Incorporation by Reference by Medtronic Vascular; in 97-550-SLR Medtronic Vascular, Inc. has filed its SEALED Memorandum of Law Submitted Pursuant to the Court's February 17, 2004 Memorandum Order (D.I. # 1204); Vascular incorporates by reference that memorandum of law into this case as if filed separately (fmt) (Entered: 03/16/2004)

03/15/2004 198 NOTICE of Filing Via Incorporation By Reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts; Cordis' Memorandum On Any Remaining Issues Under The Court's Claim Construction Concerning Cordis' Claims Against AVE (D.I. # 1206) was filed in C.A. No. 97-550-SLR and also bears the caption of this action, C.A. No. 97-700-SLR; is incorporated herein by reference as though separately filed in this action (fmt) Modified on 03/16/2004 (Entered: 03/16/2004)

03/15/2004 199 NOTICE of Filing Via Incorporation by Reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts; Declaration of Creighton G. Hoffman in support of Cordis' Memorandum On Any Remaining Issues Under the Court's Claim Construction Concerning Cordis' Claims Against AVE was filed in 97-550-SLR (D.I. # 1209); incorporated herein by reference as though separately filed in this action (fmt) (Entered: 03/16/2004)

03/22/2004 -- Status conference held in person; Judge Robinson presiding; crt. rpt. V. Gunning; set a status/scheduling teleconf. for 6/24/04 at 4:30; held jointly with status conferences in CA NO. 97-550, 98-197, and 98-19-SLR. (rld) (Entered: 03/22/2004)

03/22/2004 -- Deadline updated; set Telephone Conference for 4:30 6/24/04 (rld) (Entered: 03/22/2004)

03/26/2004 -- TRANSCRIPT filed; status conference for dates of 3/22/04; Judge Robinson presiding; Court Rptr. V. Gunning; Transcript is filed in CA No. 97-550-SLR, D.I. # 1214 (fmt) (Entered: 03/29/2004)

04/08/2004 200 NOTICE of Incorporation by Reference by Medtronic Vascular; in 97-550-SLR filing SEALED Medtronic Vascular's Brief in Response to Cordis' Memorandum Concerning the Issues Remaining to Be Resolved (D.I. # 1215) and SEALED Declaration of Robert A. Ersek (D.I. # 1216); Vascular hereby incorporates by reference those filings into this case as if filed separately (fmt) Modified on 04/12/2004 (Entered: 04/12/2004)

04/09/2004 201 Letter to Clerk from K. Jacobs Loudon re D.I. #s 1215 and 1216; should have been filed under seal; also filed a notice of incorporation of these documents in 97-700; enclosing envelopes and labels (fmt) (Entered: 04/12/2004)

04/19/2004 202 NOTICE of Incorporation By Reference by Cordis Corporation, Johnson and Johnson,

- Expandable Grafts; Cordis' Reply Brief On Any Remaining Issues Concerning AVE was filed in C.A. No. 97-550-SLR (D.I. # 1221) and also bears the caption of this action (fmt) (Entered: 04/20/2004)
- 05/11/2004 203 NOTICE of Incorporation by Reference by Medtronic Vascular; in C.A. No. 97-550 (SLR), Medtronic Vascular, Inc. filed with the Court a Motion for Leave to File Surreply and Surreply Brief In Response to Cordis' Memorandum Concerning the Issues Remaining to Be Resolved (D.I. # 1224 in C.A. No. 97-550 (SLR) under SEAL); incorporates by reference those filings into this case as if filed separately (fmt) (Entered: 05/12/2004)
- 05/12/2004 204 EXHIBIT B signed by Adam Hulbig certifying understanding of Order (fmt) (Entered: 05/14/2004)
- 05/12/2004 205 EXHIBIT B signed by Brian H. Corcoran certifying understanding of the Order (fmt) (Entered: 05/19/2004)
- 05/14/2004 206 ORDER outlining schedule for next phase of this complex litigation: Medtronic may supplement the record to reflect any changes in law; BSC may file a motion for sum. jgm.; by 6/14/04 both parties may file opening briefs according to this order; Cordis may file a responding brief by 6/28/04; reply briefs due 7/26/04; defts.' experts may file suppl. rebuttal reports by 6/14/04, Cordis may file a suppl. rebuttal report by 7/12/04, all expert discovery shall be completed by 8/12/04; court will conduct a teleconference on 8/30/04 at 4:30 p.m. to determine if trial or further motion practice is the most appropriate means to resolve this litigation; cnsl. for Medtronic shall initiate the call; SEE ORDER FOR FURTHER DETAILS; (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 05/19/2004)
- 05/27/2004 207 STIPULATION amending certain deadlines set forth in the 5/14/04 Order; with proposed order (fmt) (Entered: 05/27/2004)
- 05/28/2004 -- So Ordered granting [D.I. 207] stipulation; Medtronic and BSC's briefs on amendment-based estoppel by 6/14/04; Cordis' answering brief due 7/12/04; reply briefs due 7/26/04; Medtronic and BSC's suppl. expert rpts. on validity due 6/28/04; Cordis' suppl. rebuttal expert rpt. due 7/26/04; all expert discovery completed by 8/26/04; teleconf. re status set for 8/30/04 at 4:30 shall proceed as scheduled. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) Modified on 05/28/2004 (Entered: 05/28/2004)
- 05/28/2004 -- Deadline updated; set telephonic Status Conference for 4:30 8/30/04 (rld) (Entered: 05/28/2004)
- 06/11/2004 208 MOTION by Cordis Corporation with Proposed Order for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC Answer Brief due 6/25/04 re: [208-1] motion (fmt) (Entered: 06/14/2004)
- 06/11/2004 209 Opening Brief Filed by Cordis Corporation [208-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC (fmt) (Entered: 06/14/2004)
- 06/14/2004 210 NOTICE of Incorporation by Reference by Medtronic Vascular; in 97-550-SLR Medtronic Vascular filed D.I. #s 1234 and 1235; Vascular hereby incorporates by reference those filings into this case as if filed separately (fmt) (Entered: 06/15/2004)
- 06/25/2004 211 STIPULATION amending deadlines set forth in the Court's Order dated 5/14/04; with proposed order (fmt) (Entered: 06/29/2004)
- 06/25/2004 212 NOTICE of Incorporation by Reference by Medtronic Vascular; Medtronic Vascular has filed D.I. # 1238 in 97-550-SLR; hereby incorporates by reference this filing into this case as if filed separately (fmt) (Entered: 06/29/2004)
- 07/01/2004 -- So Ordered granting [211-1] stipulation reset Scheduling Order Deadlines: Expert Discovery deadline extended to 8/26/04 telephonic status conf. set for 8/30/04 at 4:30 shall proceed as scheduled. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 07/01/2004)
- 07/12/2004 213 NOTICE of Filing Via Incorporation by Reference by Cordis Corporation; D.I. # 1240 was filed in 97-550-SLR; it is incorporated herein by reference as though filed separately in this action (fmt) (Entered: 07/14/2004)
- 07/26/2004 214 NOTICE of Incorporation by Reference by Medtronic Vascular; in 97-550-SLR, Medtronic Vascular, Inc. is filing D.I. # 1243; Vascular hereby incorporates by reference filing into this case as if filed separately (fmt) (Entered: 07/27/2004)
- 07/27/2004 215 CERTIFICATE OF SERVICE by Cordis Corporation re request for prod. of docs. and things to Medtronic Vascular, Inc. (fmt) (Entered: 07/28/2004)
- 08/02/2004 216 CERTIFICATE OF SERVICE by Cordis Corporation re objs and responses to Medtronic Vascular Inc.'s reqs. for docs. and things (fmt) (Entered: 08/03/2004)

08/09/2004 -- Tele-conference held; Judge Robinson presiding; Court Rptr. B. Gaffigan; re: discovery issues (fmt) (Entered: 08/10/2004)

08/09/2004 217 TRANSCRIPT filed [0-0] telephone conference for dates of 8/9/04; Judge Robinson presiding; Court Rptr. B. Gaffigan (fmt) (Entered: 08/10/2004)

08/10/2004 218 CERTIFICATE OF SERVICE by Cordis Corporation re amended objs and responses to reqs for docs and things (fmt) (Entered: 08/10/2004)

08/16/2004 -- Deadline updated; set in-person Status Conference for 8:00 9/22/04 per 8/9/04 teleconf. (rld) (Entered: 08/16/2004)

09/21/2004 219 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/21/2004)

09/21/2004 220 ORDER denying Medtronic AVE's motion for partial sum. jgm. (SEE D.I. 206, 210); denying BSC and Scimed's motion for partial sum. jgm. D.I.213; granting [208-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/21/2004)

09/22/2004 -- Tele-conference held; Judge Robinson presiding; Court Rptr. V. Gunning present; Held jointly with 97-550-SLR, 98-19-SLR and 98-197-SLR; re: case status (fmt) (Entered: 09/24/2004)

09/23/2004 221 TRANSCRIPT filed for dates of 9/22/04 Teleconference; Judge Robinson presiding; Court Rptr. V. Gunning (fmt) (Entered: 09/23/2004)

09/28/2004 222 ORDER on or before 10/26/04 Medtronic AVE and Boston Scientific may submit supplemental expert reports on the issue of infringement, the experts submitting reports shall be made available for deposition during the subsequent two weeks; on or before 12/7/04 Cordis may either submit responsive suppl. expert reports or a motion for sum. jgm. based on the trial record and the supplemental discovery record; SEE Order for futher details; (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/28/2004)

10/05/2004 223 MOTION by Cordis Corporation with Proposed Order for Summary Judgment on Obviousness Answer Brief due 10/19/04 re: [223-1] motion (fmt) (Entered: 10/06/2004)

10/05/2004 224 NOTICE of Filing Via Incorporation by Reference by Defendants; on 10/5/04, Cordis' Opening Brief in Support of its Motion for Sum. Jgm. on Obviousness was filed in 97-550-SLR (D.I. # 1259) and also bears the caption of this action; incorporated herein by reference as though separately (fmt) (Entered: 10/06/2004)

10/07/2004 225 NOTICE of Incorporation by Reference by Medtronic Vascular; filing with the Court Supplemental Brief in Support of its Renewed Motion for Jgm. as a Matter of Law (D.I. # 1261 in 97-550-SLR); incorporates by reference that filing into this case (fmt) (Entered: 10/08/2004)

10/12/2004 227 NOTICE of filing via incorporation by reference of the opening brief to D.I. 226 by Cordis Corporation, Johnson and Johnson, Expandable Grafts (opening brief is filed in CA NO. 97-550-SLR, D.I. 1263). (rld) (Entered: 10/13/2004)

10/13/2004 226 Combined MOTION by Cordis Corporation, Johnson and Johnson, Expandable Grafts with Proposed Order for Reconsideration of [222-1] order , and to Expedite Answer Brief due 10/27/04 re: [226-1] motion, Answer Brief due 10/27/04 re: [226-2] motion (rld) (Entered: 10/13/2004)

10/18/2004 228 Joinder by Medtronic Vascular in The Boston Scientific Defts' Motion for Reconsideration of the Court's September 21, 2004 Order and Memorandum Opinion (fmt) (Entered: 10/19/2004)

10/21/2004 229 STIPULATION to extend the deadline by which Cordis must respond to Medtronic Vascular's supplemental brief in support of its renewed motion for jgm. of a matter of law; with proposed order (fmt) (Entered: 10/21/2004)

10/22/2004 -- So Ordered granting [229-1] stipulation extending Cordis' response date to 10/25/04 to respond to Medtronic's suppl. br. (D.I. 1261 in CA No. 97-550; filed as a ntc. on this docket at D.I. 225) (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/22/2004)

10/25/2004 230 Response by Cordis Corporation to ([1261-1] in C.A. No. 97-550-SLR) AVE's Supplemental Brief in Support of its Motion for JMOL on the '984 Patent's "To Flexibly Connect" Limitation; referenced by notice in this case at D.I. 225 (fmt) (Entered: 10/26/2004)

10/26/2004 231 STIPULATION And Order Amending the September 28, 2004 Order (fmt) (Entered: 10/27/2004)

10/26/2004 232 Answer Brief Filed by Medtronic Vascular [226-1] motion for Reconsideration of [222-1] order - Reply Brief due 11/2/04, [226-2] motion to Expedite - Reply Brief due 11/2/04 (fmt) (Entered: 10/28/2004)

10/28/2004	233	Response by Cordis Corporation to AVE's Attempt to Join In BSC's Motion for Reconsideraton of the Court's September 21, 2004 Order (fmt) (Entered: 10/28/2004)
11/01/2004	--	So Ordered granting [231-1] stipulation; date for submission of Medtronic's and BSC's supplemental expert reports on the issue of infringement is changed to 10/29/04; time period for which the experts submitting rpts. shall be available for depo. is now 15 days from submission of the rpts.; Cordis's responsive submissions now due 12/10/04 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/02/2004)
11/03/2004	234	STIPULATION to extend time for opposition briefs to Cordis' Motion for Sum. Jgm. on Obviousness and to extend time for Cordis' reply briefs; with proposed order (fmt) (Entered: 11/03/2004)
11/04/2004	--	So Ordered granting [234-1] stipulation reset Answer Brief Deadline to 11/8/04 re: [223-1] motion for Summary Judgment on Obviousness , and reset Reply Brief Deadline to 11/22/04 re: [223-1] motion for Summary Judgment on Obviousness (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/04/2004)
11/05/2004	235	STIPULATION to extend time for Medtronic Vascular, Inc. to file a Reply in support of its supplemental brief on it motion for JMOL based on the "to flexibly connect" limitation and a reply in support of its joinder in BSC's motion for reconsideration; with proposed order (fmt) (Entered: 11/08/2004)
11/08/2004	236	NOTICE of Filing By Incorporation By Reference by Medtronic Vascular; in C.A. No. 97-550-SLR, Medtronic Vascular, Inc. filed Answering Brief in Opposition to Cordis' Motion for Sum. Jgm. on Obviousness; D.I. # 1275 in C.A. No. 97-550-SLR (fmt) (Entered: 11/09/2004)
11/09/2004	--	So Ordered granting [235-1] stipulation that Medtronic Vascular, Inc. may file a reply in support of its suppl. brief on its motion for JMOL based on the "to flexibly connect" limitation and a reply in support of its joinder in BSC's motion for reconsideration (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/09/2004)
11/09/2004	237	NOTICE of Filing by Incorporation by Reference by Medtronic Vascular; in C.A. No. 97-550-SLR, Medtronic Vascular, Inc. has filed the Appendix to its Answering Brief In Opposition to Cordis's Motion for Sum. Jgm. on Obviousness; D.I. # 1277 in C.A. No. 97-550-SLR (fmt) (Entered: 11/10/2004)
11/10/2004	238	REPLY by Medtronic Vascular in support of its supplemental brief on its motion for JMOL based on the "to flexibly connect" limitation (rld) (Entered: 11/12/2004)
11/10/2004	239	Limited Reply by Medtronic Vascular in support of its Joinder in BSC's motion for reconsideration to correct Cordis' Misstatement (rld) (Entered: 11/12/2004)
11/22/2004	240	Combined Reply Brief Filed by Cordis Corporation [223-1] motion for Summary Judgment on Obviousness (fmt) (Entered: 11/23/2004)
12/01/2004	241	ORDER denying [226-1] motion for Reconsideration of [222-1] order, denying [226-2] motion to Expedite; IT IS FURTHER ORDER that for the duration of this case the court will not consider any future motions for reconsideration as this case has consumed an enormous amt. of judicial resources (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 12/01/2004)
12/07/2004	--	Tele-conference held re discovery issues; Judge Robinson presiding; V. Gunning crt. rprr.; held in cases: CA NO. 97-550, 97-700, 98-19, and 98-197-SLR. (rld) (Entered: 12/13/2004)
12/15/2004	242	TRANSCRIPT filed [0-0] telephone conference for dates of 12/7/04; Judge Robinson presiding; Court Rprr. V. Gunning (fmt) (Entered: 12/16/2004)
12/21/2004	243	STIPULATED Pretrial Scheduling Order (fmt) (Entered: 12/22/2004)
01/18/2005	--	Tele-conference held, Judge Robinson presiding; crt. rprr. V. Gunning present; re trial schedule; held jointly with CA NO. 97-550, 98-19, and 98-197-SLR. (rld) (Entered: 01/18/2005)
01/18/2005	--	Deadline updated; set Scheduling Order Deadlines: Pretrial conference by 5:00 2/10/05 Trial Date Deadline 9:30 3/4/05 (rld) (Entered: 01/18/2005)
01/20/2005	244	TRANSCRIPT filed [0-0] telephone conference for dates of 1/18/05; Judge Robinson presiding; crt. rprr. V. Gunning (rld) (Entered: 01/21/2005)
01/24/2005	245	STIPULATION with proposed order re motions in limine (fmt) (Entered: 01/24/2005)
01/25/2005	--	So Ordered granting [245-1] stipulation reset Motion in Limine Filing deadline to 1/25/05, responses due 2/7/05 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 01/25/2005)
01/25/2005	246	SEALED MOTION by Medtronic Vascular in Limine No. 1 , in Limine No. 2 , in Limine No. 3 , in Limine No. 4 , in Limine No. 5 , in Limine No. 6 , in Limine No. 7 , in Limine No. 8 , in Limine No. 9 , in Limine No. 10 Answer Brief due 2/7/05 re: [246-1] motion, Answer Brief due 2/7/05

- re: [246-2] motion, Answer Brief due 2/7/05 re: [246-3] motion, Answer Brief due 2/7/05 re: [246-4] motion, Answer Brief due 2/7/05 re: [246-5] motion, Answer Brief due 2/7/05 re: [246-6] motion, Answer Brief due 2/7/05 re: [246-7] motion, Answer Brief due 2/7/05 re: [246-8] motion, Answer Brief due 2/7/05 re: [246-9] motion, Answer Brief due 2/7/05 re: [246-10] motion (fmt) (Entered: 01/26/2005)
- 01/25/2005 247 SEALED Appendix to Motions In Limine, Nos. 1-10 Filed by Medtronic Vascular (fmt) (Entered: 01/26/2005)
- 01/26/2005 248 SEALED MOTION by Cordis Corporation, Johnson and Johnson in Limine No. 1 , in Limine No. 2 , in Limine No. 3 , in Limine No. 4 , in Limine No. 5 , in Limine No. 6 , in Limine No. 7 , in Limine No. 8 , in Limine No. 9 , in Limine No. 10 , in Limine No. 11 , in Limine No. 12 , in Limine No. 13 , in Limine No. 14 , in Limine No. 15 , in Limine No. 16 , in Limine No. 17 , in Limine No. 18 , in Limine No. 19 Answer Brief due 2/7/05 re: [248-1] motion, Answer Brief due 2/7/05 re: [248-2] motion, Answer Brief due 2/7/05 re: [248-3] motion, Answer Brief due 2/7/05 re: [248-4] motion, Answer Brief due 2/7/05 re: [248-5] motion, Answer Brief due 2/7/05 re: [248-6] motion, Answer Brief due 2/7/05 re: [248-7] motion, Answer Brief due 2/7/05 re: [248-8] motion, Answer Brief due 2/7/05 re: [248-9] motion, Answer Brief due 2/7/05 re: [248-10] motion, Answer Brief due 2/7/05 re: [248-11] motion, Answer Brief due 2/7/05 re: [248-12] motion, Answer Brief due 2/7/05 re: [248-13] motion, Answer Brief due 2/7/05 re: [248-14] motion, Answer Brief due 2/7/05 re: [248-15] motion, Answer Brief due 2/7/05 re: [248-16] motion, Answer Brief due 2/7/05 re: [248-17] motion, Answer Brief due 2/7/05 re: [248-18] motion, Answer Brief due 2/7/05 re: [248-19] motion (fmt) (Entered: 01/27/2005)
- 01/26/2005 249 NOTICE of Filing Via Incorporation by Reference by Johnson&Johnson , Cordis Corporation; Volume I of the Appendix of Exhibits to Cordis' In Limine Motions was filed in C.A. No. 97-550-SLR (D.I. 1293); incorporated herein by reference as though separately filed in this action (fmt) (Entered: 01/27/2005)
- 01/26/2005 250 NOTICE of Filing Via Incorporation by Reference by Johnson&Johnson , Cordis Corporation; Volume II of the Appendix of Exhibits to Cordis' In Limine Motions was filed in C.A. No. 97-550-SLR (D.I. # 1294); incorporated herein by reference as though separately filed in this action (fmt) (Entered: 01/27/2005)
- 01/27/2005 251 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsf (fmt) (Entered: 01/28/2005)
- 01/27/2005 252 ORDER denying [223-1] motion for Summary Judgment on Obviousness; Medtronic shall submit bills of cost for the reasonable costs of briefing associated with Cordis' motion for summary judgment by 3/22/05 ((signed by Judge Sue L. Robinson) copies to: cnsf (fmt) (Entered: 01/28/2005)
- 02/02/2005 253 CERTIFICATE OF SERVICE by Medtronic Vascular re ntc. to Cordis Corporation and Johnson & Johnson pursuant to 35 U.S.C. section 282 (fmt) (Entered: 02/02/2005)
- 02/07/2005 254 SEALED Answer Brief Filed by Medtronic Vascular [248-1] motion in Limine No. 1, [248-2] motion in Limine No. 2, [248-3] motion in Limine No. 3, [248-4] motion in Limine No. 4, [248-5] motion in Limine No. 5, [248-6] motion in Limine No. 6, [248-7] motion in Limine No. 7, [248-8] motion in Limine No. 8, [248-9] motion in Limine No. 9, [248-10] motion in Limine No. 10, [248-11] motion in Limine No. 11, [248-12] motion in Limine No. 12, [248-13] motion in Limine No. 13, [248-14] motion in Limine No. 14, [248-15] motion in Limine No. 15, [248-16] motion in Limine No. 16, [248-17] motion in Limine No. 17, [248-18] motion in Limine No. 18, [248-19] motion in Limine No. 19 (rld) (Entered: 02/08/2005)
- 02/07/2005 255 SEALED Appendix to Brief Filed by Medtronic Vascular Appending [254-1] answer brief (rld) (Entered: 02/08/2005)
- 02/07/2005 256 NOTICE of Filing Via Incorporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts of appendix of exhibits to defts.' responses in opposition to motions in limine filed in CA NO. 97-550-SLR on 2/7/05 (rld) (Entered: 02/08/2005)
- 02/07/2005 257 NOTICE of filing via incorporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts of defts.' responses in opposition to motions in limine; filed in CA NO. 97-550-SLR on 2/7/05 (rld) (Entered: 02/08/2005)
- 02/08/2005 258 Proposed Verdict Sheet filed by Medtronic Vascular (rld) (Entered: 02/09/2005)
- 02/08/2005 259 NOTICE of FILING VIA INCORPORATION BY REFERENCE by Cordis Corporation, Johnson and Johnson, Expandable Grafts re: Joint pretrial order (Cordis v. Medtronic) filed in CA No. 97-550-SLR, D.I. 1311. (rld) (Entered: 02/09/2005)
- 02/08/2005 260 NOTICE of FILING VIA INCORPORATION BY REFERENCE by Cordis Corporation, Johnson and Johnson, Expandable Grafts re: Joint proposed preliminary jury instr. (Cordis v. Medtronic) filed in CA No. 97-550-SLR, D.I. 1307. (rld) (Entered: 02/09/2005)

02/08/2005	261	NOTICE of FILING VIA INCORPORATION BY REFERENCE by Cordis Corporation, Johnson and Johnson, Expandable Grafts re: Joint proposed jury instructions (Cordis v. Medtronic) filed in CA No. 97-550-SLR, D.I. 1308. (rld) (Entered: 02/09/2005)
02/09/2005	262	NOTICE of filing via incorporation by reference by Cordis Corporation, Johnson and Johnson, Expandable Grafts, re: Corrected Joint proposed jury instr. (Cordis v. Med.) D.I. 1319 in CA No. 97-550-SLR. (rld) (Entered: 02/09/2005)
02/10/2005	--	Pre-trial conference held; Judge Robinson presiding; crt. rprr. V. Gunning; held jointly with Civ. Nos. 97-550 and 98-19-SLR. (rld) (Entered: 02/11/2005)
02/10/2005	263	NOTICE of filing via incorp. by reference by Cordis Corporation re D.I. 1316 in Civ. No. 97-550-SLR. (rld) (Entered: 02/11/2005)
02/10/2005	264	NOTICE of filing via incorp. by reference by Cordis Corporation re D.I. 1313 in Civ. No. 97-550-SLR. (rld) (Entered: 02/11/2005)
02/11/2005	265	NOTICE to Take Deposition of Gregory Diskant and Eugene Gelernter on 2/18/05 by Medtronic Vascular.(fmt,) (Entered: 02/14/2005)
02/16/2005	266	Letter to Judge Robinson from S. Balick regarding court's req. during pretrial conference for parties to identify any in limine motions which there is no longer any dispute; parties far from agreement therefore Cordis submits a listing of the motions they will not contest.(rld,) (Entered: 02/16/2005)
02/17/2005	267	Letter to Judge Robinson from L. Polizoti responding to Cordis' 2/16 Letter to the Court; Medtronic AVE submits this letter summarizing which motions in limine are no longer in dispute (fmt,) (Entered: 02/18/2005)
02/18/2005	268	DEFICIENCY NOTICE by the Court issued to L. Polizoti, Esq. re [267] Letter; letter was captioned with 3 case numbers and only one original was filed; file 2 more originals (fmt,) (Entered: 02/18/2005)
02/22/2005	269	TRANSCRIPT of Pretrial Conference held on 2/10/05 before Judge Robinson. Court Reporter: V. Gunning. (Transcript on file in Clerk's Office) (fmt,) (Entered: 02/23/2005)
02/22/2005	271	NOTICE of Substitution of Primary Attorney by Karen Jacobs Loudon on behalf of Medtronic Vascular, Inc. (fmt,) (Entered: 02/24/2005)
02/23/2005	270	MEMORANDUM ORDER; Medtronic's renewed JMOL is denied; granting [246-1] Motion in Limine, finding as moot [246-2] Motion in Limine, granting in part and denying in part [246-3] (granted as to ACS arbitration and settlement; denied as to Abbott and Jomed licenses; moot as to ACS license agreement) Motion in Limine, denying [246-4] Motion in Limine, finding as moot [246-5] Motion in Limine, denying [246-6] Motion in Limine, denying [246-7] Motion in Limine, granting [246-8] Motion in Limine, granting [246-9] Motion in Limine, granting [246-10] Motion in Limine, granting [248-1] Motion in Limine, granting [248-2] Motion in Limine, finding as moot [248-3] Motion in Limine, finding as moot [248-4] Motion in Limine, finding as moot [248-5] Motion in Limine, granting [248-6] Motion in Limine, granting [248-7] Motion in Limine, granting [248-8] Motion in Limine, granting [248-9] Motion in Limine, granting [248-10] Motion in Limine, granting [248-11] Motion in Limine, granting [248-12] Motion in Limine, granting [248-13] Motion in Limine, granting [248-14] Motion in Limine, granting with an exception [248-15] Motion in Limine, granting [248-16] Motion in Limine, denying [248-17] Motion in Limine, denying [248-18] Motion in Limine, granting [248-19] Motion in Limine SEE ORDER FOR COMPLETE DETAILS Order of trial detailed on last 2 pages of this memorandum order.. Signed by Judge Sue L. Robinson on 2/23/05. (rld,) (Entered: 02/23/2005)
02/23/2005	272	Submission on the relevance of its patents by Medtronic Vascular, Inc.. (rld,) (Entered: 02/24/2005)
02/23/2005	--	Original of D.I. 267 received; deficiency is cleared (fmt,) (Entered: 02/24/2005)
02/25/2005	273	NOTICE OF SERVICE of four subpoenas duces tecum served upon Medtronic Vascular, Inc. requiring that it produce for inspection and use at trial all physical models and demonstratives which were present in courtroom 6B on any day between and including February 10, 2005 and February 17, 2005 by Cordis Corporation.(fmt,) (Entered: 02/25/2005)
02/25/2005	274	NOTICE of Filing Via Incorporation by Reference by Johnson & Johnson Interventional Systems Co., Cordis Corporation; Motion and Order for Admission Pro Hac Vice was filed in 97-550-SLR (fmt,) (Entered: 02/28/2005)
02/25/2005	275	MOTION to Compel, MOTION for Leave to Supplement the Expert Reports of Dr. Robert Wagoner and Dr. Richard Heuser - filed by Medtronic Vascular, Inc.. (fmt,) (Entered: 02/28/2005)
02/25/2005	276	OPENING BRIEF in Support re [275] MOTION to Compel MOTION for Leave to File filed by Medtronic Vascular, Inc.. Answering Brief/Response due date per Local Rules is 3/11/2005.

(fmt,) (Entered: 02/28/2005)

02/28/2005 277 DEFICIENCY NOTICE by the Court issued to John Day, Esq re [274] Notice; Motion to Appear Pro Hac Vice was only filed in 97-550-SLR; Notices of Filing Via Incorporation by Reference can't be filed for Motions; Please file an original motion for each case number. (fmt,) (Entered: 02/28/2005)

02/28/2005 278 Cordis' Response to Medtronic Vascular's Submission on the Relevance of its Patents filed by Cordis Corporation.(fmt,) (Entered: 02/28/2005)

02/28/2005 279 REVISED MEMORANDUM AND ORDER re [270] Order on Motions in Limine, adding claims 51 and 54 of the '762 patent to the pending issues noted in Part 4.a.1 and removing references to damages from Part 6.. Signed by Judge Sue L. Robinson on 2/28/05. (rld,) (Entered: 02/28/2005)

03/01/2005 280 MOTION for Pro Hac Vice Appearance of Attorney Scott B. Howard, Kathleen M. Crotty, Christopher M.P. Jackson, Wendy Kemp Akbar, Catherine A. Williams, and Eric I. Harris - filed by Cordis Corporation. (Day, John) (Entered: 03/01/2005)

03/02/2005 -- SO ORDERED, re 280 MOTION for Pro Hac Vice Appearance of Attorney Scott B. Howard, Kathleen M. Crotty, Christopher M.P. Jackson, Wendy Kemp Akbar, Catherine A. Williams, and Eric I. Harris filed by Cordis Corporation, . Signed by Judge Sue L. Robinson on 3/2/05. (rld,) (Entered: 03/02/2005)

03/02/2005 281 MOTION for Pro Hac Vice Appearance of Attorney James G. Rizzo, Michael W. Connelly - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/02/2005)

03/02/2005 282 Letter to The Honorable Sue L. Robinson from Steven J. Balick regarding request for retrieval of prior trial exhibits. (Balick, Steven) (Entered: 03/02/2005)

03/03/2005 283 Letter to Dr. Peter T. Dalleo from Steven J. Balick regarding Attorney Conference Room for trial. (Balick, Steven) (Entered: 03/03/2005)

03/04/2005 284 ANSWERING BRIEF in Opposition Ave's Motion to Compel and Motion for Leave to Supplement the Expert Reports of Dr. Robert Wagoner and Dr. Richard Heuser filed by Cordis Corporation.Reply Brief due date per Local Rules is 3/11/2005. (Attachments: # 1 # 2)(Day, John) (Entered: 03/04/2005)

03/04/2005 285 ANSWERING BRIEF in Opposition re [275] MOTION to Compel MOTION for Leave to File Cordis' Submission Concerning the Scope of Dr. Ersek's Testimony filed by Cordis Corporation.Reply Brief due date per Local Rules is 3/11/2005. (Day, John) (Entered: 03/04/2005)

03/04/2005 288 Voir Dire Questions to Jury Panel(fmt,) (Entered: 03/07/2005)

03/04/2005 289 Preliminary Jury Instructions. (fmt,) (Entered: 03/07/2005)

03/04/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/4/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/07/2005)

03/05/2005 286 (THIS IS THE REDACTED VERSION OF D.I. 295) MOTION Memorandum Concerning Product to Product Comparisons - filed by Medtronic Vascular, Inc.. (Louden, Karen) Modified on 3/10/2005 (fmt,). (Entered: 03/05/2005)

03/06/2005 287 ANSWERING BRIEF in Opposition re 286 MOTION Memorandum Concerning Product to Product Comparisons filed by Cordis Corporation.Reply Brief due date per Local Rules is 3/11/2005. (Balick, Steven) (Entered: 03/06/2005)

03/07/2005 -- SO ORDERED, re 281 MOTION for Pro Hac Vice Appearance of Attorney James G. Rizzo, Michael W. Connelly filed by Medtronic Vascular, Inc., . Signed by Judge Sue L. Robinson on 3/4/05. (rld,) (Entered: 03/07/2005)

03/07/2005 290 SEALED Letter to Chief Judge Robinson from Morris, Nichols/Karen Jacobs Louden regarding outstanding trial matters. (Louden, Karen) Modified on 3/7/2005 (fmt,). (Entered: 03/07/2005)

03/07/2005 291 Proposed Jury Instructions by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/07/2005)

03/07/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/7/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/07/2005)

03/08/2005 292 Revised Proposed Jury Instructions by Cordis Corporation. (Day, John) Modified on 3/8/2005 (fmt,). (Entered: 03/08/2005)

03/08/2005 293 Revised Proposed form of Special Verdict and Interrogs to the Jury (Cordis v. Medtronic AVE) by Cordis Corporation. (Day, John) Modified on 3/8/2005 (fmt,). (Entered: 03/08/2005)

03/08/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/8/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/09/2005)

03/09/2005 -- MOOTING D.I. 275, MOTION to Compel and MOTION for Leave to File, filed by Medtronic Vascular, Inc., per filing of D.I. 290 on 3/7/05 (rld,) (Entered: 03/09/2005)

03/09/2005 294 MOTION for Judgment as a Matter of Law Of Non-Infringement - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/09/2005)

03/09/2005 295 SEALED MOTION re 286 MOTION Memorandum Concerning Product to Product Comparisons Under Seal - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/09/2005)

03/09/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/9/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/10/2005)

03/09/2005 -- In Open Court Judge Robinson granted in part and denied in part 286 Redacted Motion Concerning Product to Product Comparisons, granted in part and denied in part 295 SEALED Motion Concerning Product to Product Comparisons by Judge Sue L. Robinson on 3/9/05. (fmt,) (Entered: 03/11/2005)

03/10/2005 296 VERDICT SHEET by Medtronic Vascular, Inc., Arterial Vascular Engineering, Inc.. (Polizoti, Leslie) (Entered: 03/10/2005)

03/10/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/10/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/10/2005)

03/11/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/11/2005; D.I. 294 - DENIED by Judge Robinson on the Record; Pltf's Oral Motion for JMOL on all issues - DENIED by Judge Robinson on the Record; Deft's Renewed Oral Motion for JMOL on All Issues - DENIED by Judge Robinson on the Record (Court Reporter Hawkins Reporting Service.) (fmt,) Modified on 3/18/2005 (fmt,). (Entered: 03/12/2005)

03/11/2005 -- In Open Court Judge Robinson denied 294 Motion for Judgment as a Matter of Law by Judge Sue L. Robinson on 3/11/05. (fmt,) (Entered: 03/12/2005)

03/11/2005 297 Charge to the Jury (Attachments: # 1 Jury Charge Part 2)(fmt,) (Entered: 03/14/2005)

03/14/2005 298 JURY VERDICT; Cordis has shown that Medtronic AVE's MicroStent II infringes the limitation of the asserted claims; Cordis has shown that Medtronic AVE's GFX stent infringes the limitation of the asserted claims; Cordis has shown that Medtronic AVE's GFX 2 stent infringes the limitation of the asserted claims; Medtronic has not shown that the claims of the patents in suit are invalid due to obviousness; see verdict for further details (fmt,) (Entered: 03/14/2005)

03/14/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial completed on 3/14/2005; Jury Verdict (Court Reporter V. Gunning.) (fmt,) (Entered: 03/14/2005)

03/16/2005 299 REDACTED VERSION of 290 Letter to Chief Judge Robinson by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/16/2005)

03/16/2005 300 Letter to The Honorable Sue L. Robinson from Steven J. Balick regarding requesting permission to retrieve exhibit PX2940. (Balick, Steven) (Entered: 03/16/2005)

03/16/2005 301 ORDER directing that jurors be provided lunch (cc: Finance). Signed by Judge Sue L. Robinson on 3/16/05. (rld,) (Entered: 03/16/2005)

03/16/2005 -- Remark: PX 2940 released to Steven Balick, Esq., Ashby & Geddes (fmt,) (Entered: 03/16/2005)

03/31/2005 302 JUDGMENT in favor of defts. Cordis Corp., Johnson & Johnson, and Expandable Grafts Partnership and against pltf. Medtronic Vascular, Inc. . Signed by Judge Sue L. Robinson on 3/31/05. (rld,) (Entered: 03/31/2005)

04/07/2005 303 STIPULATION dates of post trial documents by Medtronic Vascular, Inc., Cordis Corporation, Cordis Corporation. (Polizoti, Leslie) (Entered: 04/07/2005)

04/11/2005 -- SO ORDERED, re 303 Stipulation filed by Cordis Corporation,, Medtronic Vascular, Inc.,, Set Briefing Schedule for post-trial motions: motion due 4/14/05. Opening Brief due 4/19/2005. Answering Brief due 5/5/2005. Reply Brief due 5/19/2005. Signed by Judge Sue L. Robinson on 4/11/05. (rld,) (Entered: 04/11/2005)

04/14/2005 304 Jury Trial Exhibit List; Trial Dates 3/4/05, 3/7/05-3/11/05, 3/14/05 (fmt,) (Entered: 04/14/2005)

04/14/2005 305 MOTION for New Trial On Cordis' Patent Infringement Claims And Medtronic's Invalidity Counterclaims - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 04/14/2005)

04/14/2005 306 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 04/14/2005)

04/15/2005 307 TRANSCRIPT of Jury Trial held on 3/4/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME I (Transcript on file in Clerk's Office); Original Transcript Filed in 97-550-SLR D.I. 1386 (fmt,) (Entered: 04/18/2005)

04/15/2005 -- CORRECTING ENTRY: D.I. 307 does not exist; the original transcript is filed as D.I. 1386 in 97-550-SLR (fmt,) (Entered: 04/18/2005)

04/15/2005 -- TRANSCRIPT of Jury Trial held on 3/7/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME II (Transcript on file in Clerk's Office); Original Transcript is D.I. 1387 in 97-550-SLR (Entered: 04/18/2005)

04/15/2005 -- TRANSCRIPT of Jury Trial held on 3/8/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME III (Transcript on file in Clerk's Office); Original Transcript filed in 97-550-SLR D.I. 1388 (fmt,) (Entered: 04/18/2005)

04/15/2005 -- TRANSCRIPT of Jury Trial held on 3//05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME IV (Transcript on file in Clerk's Office); Original Transcript is filed in 97-550-SLR D.I. 1389 (fmt,) (Entered: 04/18/2005)

04/15/2005 -- TRANSCRIPT of Jury Trial held on 3/10/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME V (Transcript on file in Clerk's Office); Original Transcript filed in 97-550-SLR D.I. 1390 (fmt,) (Entered: 04/18/2005)

04/15/2005 -- TRANSCRIPT of Jury Trial held on 3/11/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME VI (Transcript on file in Clerk's Office) ; Original Transcript filed in 97-550-SLR D.I. 1391 (fmt,) (Entered: 04/18/2005)

04/19/2005 -- TRANSCRIPT of Jury Trial held on 3/14/05 before Judge Robinson. Court Reporter: V. Gunning. VOLUME VII (Transcript on file in Clerk's Office); Original transcript is filed in 97-550-SLR D.I. 1392 (fmt,) (Entered: 04/19/2005)

04/19/2005 308 MOTION to reinstate and update the damage verdicts against AVE and BSC - filed by Cordis Corporation. (Day, John) (Entered: 04/19/2005)

04/19/2005 309 SEALED OPENING BRIEF in Support re 308 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Cordis Corporation. Answering Brief/Response due date per Local Rules is 5/3/2005. (Day, John) (Entered: 04/19/2005)

04/19/2005 310 OPENING BRIEF in Support re 306 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims filed by Medtronic Vascular, Inc.. Answering Brief/Response due date per Local Rules is 5/3/2005. (Louden, Karen) (Entered: 04/19/2005)

04/19/2005 311 OPENING BRIEF in Support re 305 MOTION for New Trial On Cordis' Patent Infringement Claims And Medtronic's Invalidity Counterclaims filed by Medtronic Vascular, Inc.. Answering Brief/Response due date per Local Rules is 5/3/2005. (Attachments: # 1 # 2)(Louden, Karen) (Entered: 04/19/2005)

04/26/2005 312 REDACTED VERSION of 309 Opening Brief in Support of Cordis' Motion to Reinstate and Update the Damage Verdicts Against AVE and BSC by Cordis Corporation. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10)(Day, John) (Entered: 04/26/2005)

04/29/2005 313 STIPULATION TO EXTEND TIME Response To Cordis' Motion To Reinstate And Update The Damages Verdicts Against AVE and BSC (D.I. 1393, 1394) to May 17, 2005 - filed by Medtronic Vascular, Inc.. (Polizoti, Leslie) (Entered: 04/29/2005)

05/03/2005 -- SO ORDERED, re 313 STIPULATION TO EXTEND TIME Response To Cordis' Motion To Reinstate And Update The Damages Verdicts Against AVE and BSC (D.I. 1393, 1394) to May 17, 2005 filed by Medtronic Vascular, Inc., Set Briefing Schedule: Answering Brief due 5/17/2005. Signed by Judge Sue L. Robinson on 5/3/05. (rld,) (Entered: 05/03/2005)

05/05/2005 314 ANSWERING BRIEF in Opposition re 305 MOTION for New Trial On Cordis' Patent Infringement Claims And Medtronic's Invalidity Counterclaims, 306 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims filed by Cordis Corporation. Reply Brief due date per Local Rules is 5/12/2005. (Attachments: # 1 Exhibit A and B# 2 Exhibit C)(Day, John) (Entered: 05/05/2005)

05/17/2005 315 SEALED ANSWERING BRIEF in Opposition re 308 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Medtronic Vascular, Inc.. Reply Brief due date per Local Rules is 5/24/2005. (Polizoti, Leslie) (Entered: 05/17/2005)

05/19/2005 316 REPLY BRIEF Medtronic Vascular Inc.'s Combined Reply Brief In Support Of Its Motion For Judgment As A Matter Of Law On Cordis Corporation's Patent Infringement Claims And Its Motion For A New Trial(D.I. Nos. 305 and 306) filed by Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Attachments: # 1)(Louden, Karen) Modified on 5/20/2005 (fmt,). (Entered: 05/19/2005)

05/24/2005 317 STIPULATION TO EXTEND TIME by which Cordis Corporation's reply brief is due in support of its motion to reinstate and update the damages verdict against Medtronic Vascular, Inc. to May 27, 2005 - filed by Cordis Corporation. (Balick, Steven) (Entered: 05/24/2005)

05/24/2005 318 REDACTED VERSION of [1411] / 315 Answering Brief in Opposition To Cordis Corporation's Motion To Reinstate And Update The Damages Verdict Against AVE And BSC by Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Attachments: # 1 # 2 # 3 # 4 # 5 # 6 # 7 # 8 # 9) (Polizoti, Leslie) Modified on 5/24/2005 (fmt,). (Entered: 05/24/2005)

05/25/2005 -- SO ORDERED, re 317 STIPULATION TO EXTEND TIME by which Cordis Corporation's reply brief is due in support of its motion to reinstate and update the damages verdict against Medtronic Vascular, Inc. to May 27, 2005 filed by Cordis Corporation,, Set Briefing Schedule: Reply Brief due 5/27/2005.. Signed by Judge Sue L. Robinson on 5/25/05. (rld,) (Entered: 05/25/2005)

05/27/2005 319 SEALED REPLY BRIEF re 308 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Cordis Corporation, Johnson and Johnson. (Day, John) (Entered: 05/27/2005)

05/27/2005 320 SEALED DECLARATION re 308 MOTION to reinstate and update the damage verdicts against AVE and BSC, 319 Reply Brief by Cordis Corporation, Johnson and Johnson. (Day, John) (Entered: 05/27/2005)

05/31/2005 321 REQUEST for Oral Argument by Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Polizoti, Leslie) (Entered: 05/31/2005)

06/07/2005 322 REDACTED VERSION of 320 Declaration of Creighton G. Hoffman by Cordis Corporation. (Day, John) (Entered: 06/07/2005)

06/08/2005 323 REDACTED VERSION of [1421] Reply Brief, 319 Reply Brief in Support of Cordis' Motion to Reinstate the Damages Verdict Against AVE and Award Prejudgment Interest by Cordis Corporation, Johnson and Johnson. (Attachments: # 1 Exhibit 1 part 1# 2 Exhibit 1 part 2# 3 Exhibit 2 part 1# 4 Exhibit 2 part 2# 5 Exhibit 2 part 3# 6 Exhibit 2 part 4# 7 Exhibit 2 part 5# 8 Exhibit 2 part 6# 9 Exhibit 3# 10 Exhibit 4 part 1# 11 Exhibit 4 part 2# 12 Exhibit 4 part 3)(Day, John) (Entered: 06/08/2005)

06/29/2005 324 Supplemental ANSWERING BRIEF in Opposition re [1393] MOTION to reinstate and update the damage verdicts against AVE and BSC Medtronic Vascular Inc.'s Supplement To D.I. 1411, Its Answering Brief In Opposition To Cordis' Motion To Reinstate And Update The Damages Verdict Against AVE and BSC filed by Medtronic Vascular, Inc., Medtronic Vascular, Inc..Reply Brief due date per Local Rules is 7/7/2005. (Polizoti, Leslie) (Entered: 06/29/2005)

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*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

US District Court Civil Docket**U.S. District - Delaware
(Wilmington)****1:97cv550****Cordis Corporation, et al v. Advanced Cardio Sys, et al****This case was retrieved from the court on Wednesday, August 24, 2005**

Date Filed: 10/03/1997	Class Code: LEAD, PATENT, TRIALBRIEFING
Assigned To: Honorable Sue L Robinson	Closed: no
Referred To:	Statute: 35:271
Nature of suit: Patent (830)	Jury Demand: Both
Cause: Patent Infringement	Demand Amount: \$0
Lead Docket: None	NOS Description: Patent
Other Docket: None	
Jurisdiction: Federal Question	

Litigants**Cordis Corporation
Plaintiff****Expandable Grafts Partnership
Plaintiff****Advanced Cardiovascular Systems, Inc
Defendant
[Term: 04/20/2000]****Guidant Corporation****Attorneys****John G Day
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Expandable Grafts Partnership

Counter Defendant

Date	#	Proceeding Text
10/03/1997	1	COMPLAINT filed; Mag consent notice to pltf. FILING FEE \$ 150.00 RECEIPT # 118171 (dab) (Entered: 10/06/1997)
10/03/1997	--	DEMAND for jury trial by Cordis Corporation (dab) (Entered: 10/06/1997)
10/03/1997	--	SUMMONS(ES) issued for Advanced Cardio Sys, Guidant Corporation (dab) (Entered: 10/06/1997)
10/03/1997	2	Report to Commissioner of Patents and Trademarks. Exit original. (dab) (Entered: 10/06/1997)
10/06/1997	3	RETURN OF SERVICE executed as to Advanced Cardio Sys 10/6/97 Answer due on 10/27/97 for Advanced Cardio Sys (dab) (Entered: 10/07/1997)
10/06/1997	4	RETURN OF SERVICE executed as to Guidant Corporation 10/6/97 Answer due on 10/27/97 for Guidant Corporation (dab) (Entered: 10/07/1997)
10/08/1997	5	MOTION by Cordis Corporation for Preliminary Injunction (exit duty judge JJF) (dab) Modified on 10/09/1997 (Entered: 10/09/1997)
10/08/1997	6	MEMORANDUM of Law by Cordis Corporation in support of [5-1] motion for Preliminary Injunction (dab) (Entered: 10/09/1997)
10/08/1997	7	Declaration of Marvin L. Woodall (dab) (Entered: 10/09/1997)
10/08/1997	8	Declaration of Nigel P. Buller (dab) (Entered: 10/09/1997)
10/08/1997	9	Declaration of Lee P. Bendel (dab) (Entered: 10/09/1997)
10/08/1997	10	Declaration of Brian G. Firth (SEALED) (dab) (Entered: 10/09/1997)
10/15/1997	11	CASE assigned to Judge Sue L. Robinson . Notice to all parties. (ntl) (Entered: 10/15/1997)
10/21/1997	12	Letter dated 10/21/97 from Jeffrey Moyer, Esq. to Judge Robinson; Re: response to pltf's request for a hearing on motion for preliminary injunction (lf) (Entered: 10/21/1997)
10/21/1997	13	Letter dated 10/21/97 from Steven Balick, Esq. to Judge Robinson; Re: agenda for 10/22/97 telecnf. (lf) (Entered: 10/23/1997)
10/21/1997	14	FIRST AMENDED COMPLAINT by Cordis Corporation , (Answer due 10/31/97 for Guidant Corporation, for Advanced Cardio Sys) amending [1-1] complaint (lf) (Entered: 10/23/1997)
10/22/1997	15	ORDER, hearing on pltf's preliminary injunction motion to be heard on 1/5/98 at 10:00am (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 10/23/1997)
10/22/1997	16	Praeipie filed by Cordis Corporation for summons to be issued on Arterial Vascular Engineerings, Inc and Boston Scientific Corp. (lf) (Entered: 10/23/1997)
10/22/1997	17	NOTICE of Proof of Compliance by Cordis Corporation (lf) (Entered: 10/23/1997)
10/23/1997	18	Praeipie filed by Cordis Corporation for Scimed Life Systems, Inc. (lf) (Entered: 10/27/1997)
10/23/1997	19	RETURN OF SERVICE executed as to Boston Scientific 10/22/97 Answer due on 11/12/97 for Boston Scientific (lf) (Entered: 10/27/1997)
10/23/1997	20	RETURN OF SERVICE executed as to Arterial Vascular 10/22/97 Answer due on 11/12/97 for Arterial Vascular (lf) (Entered: 10/27/1997)
10/24/1997	21	NOTICE of attorney appearance for Boston Scientific, Scimed Life Systems by Josy W. Ingersoll (lf) (Entered: 10/27/1997)
10/24/1997	22	RETURN OF SERVICE executed as to Scimed Life Systems 10/23/97 Answer due on 11/12/97 for Scimed Life Systems (lf) (Entered: 10/27/1997)
10/29/1997	23	CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: ACS's 1st set of rqst for production of documents and things (nos. 1-66) (lf) (Entered: 10/30/1997)
10/29/1997	24	CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: ACS's 1st interogs (nos. 1-11) (lf) (Entered: 10/30/1997)
10/29/1997	25	NOTICE by Advanced Cardio Sys to take deposition of Marvin Woodall on 12/3-4/97 (lf) (Entered: 10/30/1997)
10/29/1997	26	NOTICE by Advanced Cardio Sys to take deposition of Cordis Corp. on 12/1-3/97 (lf) (Entered: 10/30/1997)
10/29/1997	27	NOTICE by Advanced Cardio Sys to take deposition of Lee Bendel on 12/4-5/97 (lf) (Entered: 10/30/1997)

10/29/1997 28 NOTICE by Advanced Cardio Sys to take deposition of Brian Firth on 12/4/97 (lf) (Entered: 10/30/1997)

10/29/1997 29 NOTICE by Advanced Cardio Sys to take deposition of Richard Schatz on 12/15-16/97 (lf) (Entered: 10/30/1997)

10/29/1997 30 NOTICE by Advanced Cardio Sys to take deposition of Julio Palmez on 12/8-9/97 (lf) (Entered: 10/30/1997)

10/29/1997 31 NOTICE by Advanced Cardio Sys to take deposition of Nigel Buller on 12/3/97 (lf) (Entered: 10/30/1997)

10/29/1997 32 CERTIFICATE OF SERVICE by Cordis Corporation; Pltf's 1st rqst for production of documents and things to Advanced Cardiovascular Systemx, Inc and Guidant Corp. (lf) (Entered: 10/30/1997)

10/29/1997 33 CERTIFICATE OF SERVICE by Cordis Corporation; Pltf's 1st set of interrogs to Advanced Cardiovascular Systems. Inc and Guidant Corp. (lf) (Entered: 10/30/1997)

10/30/1997 34 Letter dated 10/30/97 from Frederick Cottrell, Esq. to Clerk; Re: serving Josy Ingersoll with papers (see letter for details) (lf) (Entered: 10/30/1997)

11/04/1997 35 Letter dated 11/4/97 from Frederick Cottrell, Esq. to Judge Robinson; Re: agenda for telecnf. scheduled for 11/5/97 (lf) (Entered: 11/07/1997)

11/04/1997 36 MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Richard Bardin, Esq. to Appear Pro Hac Vice re: [36-1] motion (lf) (Entered: 11/07/1997)

11/04/1997 37 MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for John S. Nagy, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/04/1997 38 MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Paul Feng, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/04/1997 39 NOTICE of Proof of Compliance by Cordis Corporation (lf) (Entered: 11/07/1997)

11/04/1997 40 MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Jack Kaufmann, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/04/1997 41 MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Aldo Badini, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/05/1997 42 Steno Notes for 11/5/97; Rptr: K. Maurer (lf) (Entered: 11/07/1997)

11/05/1997 -- Tele-conference held, Robinson, J., sitting; RPtr: K./ Maurer (lf) (Entered: 11/07/1997)

11/05/1997 43 STIPULATION with proposed order for defts to respond to amended complaint by 11/11/97 (lf) (Entered: 11/07/1997)

11/05/1997 44 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Arthur Gray, Charles Brainard, Albert Breneisen to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/05/1997 45 CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re 2nd set of interrogs (lf) (Entered: 11/07/1997)

11/06/1997 46 MOTION by Arterial Vascular with Proposed Order for D. Michael Underhill, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 47 MOTION by Arterial Vascular with Proposed Order for Michele Frank, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 48 MOTION by Arterial Vascular with Proposed Order for Eric Maurer, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 49 MOTION by Arterial Vascular with Proposed Order for William Bosch, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 50 MOTION by Arterial Vascular with Proposed Order for Richard Meyer, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 51 MOTION by Arterial Vascular with Proposed Order for William Wallace, Esq. to Appear Pro Hac Vice (lf) (Entered: 11/07/1997)

11/06/1997 52 MOTION by Arterial Vascular with Proposed Order to Dismiss amended complaint (lf) (Entered: 11/07/1997)

11/06/1997 53 Opening Brief Filed by Arterial Vascular [52-1] motion to Dismiss amended complaint (lf) (Entered: 11/07/1997)

11/06/1997 54 Appendix to Brief Filed by Arterial Vascular Appending [53-1] opening brief (lf) (Entered: 11/07/1997)

11/06/1997	55	Declaration of Scott Solano (SEALED) (lf) (Entered: 11/07/1997)
11/06/1997	56	ORDER, oral argument scheduled for 12/2/97 at 4:00pm; discovery completed by 1/19/98; evidentiary hearing to be held 2/9/98 (signed by Judge Sue L. Robinson) copies to: cnsf (lf) (Entered: 11/07/1997)
11/07/1997	--	So Ordered granting [51-1] motion for William Wallace, Esq. to Appear Pro Hac Vice, granting [50-1] motion for Richard Meyer, Esq. to Appear Pro Hac Vice, granting [49-1] motion for William Bosch, Esq. to Appear Pro Hac Vice, granting [48-1] motion for Eric Maurer, Esq. to Appear Pro Hac Vice, granting [47-1] motion for Michele Frank, Esq. to Appear Pro Hac Vice, granting [46-1] motion for D. Michael Underhill, Esq. to Appear Pro Hac Vice, granting [44-1] motion for Arthur Gray, Charles Brainard, Albert Breneisen to Appear Pro Hac Vice, granting [41-1] motion for Aldo Badini, Esq. to Appear Pro Hac Vice, granting [40-1] motion for Jack Kaufmann, Esq. to Appear Pro Hac Vice, granting [38-1] motion for Paul Feng, Esq. to Appear Pro Hac Vice, granting [37-1] motion for John S. Nagy, Esq. to Appear Pro Hac Vice, granting [36-1] motion for Richard Bardin, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 11/07/1997)
11/07/1997	57	Letter dated 11/7/97 from Patricia Rogowski, Esq. to Judge Robinson; Re: filing original executed declaration of Scott Solana under seal (lf) (Entered: 11/12/1997)
11/12/1997	58	MOTION by Guidant Corporation to Dismiss Answer Brief due 11/26/97 re: [58-1] motion (lf) (Entered: 11/12/1997)
11/12/1997	59	Opening Brief Filed by Guidant Corporation [58-1] motion to Dismiss Answer Brief due 11/26/97 (lf) (Entered: 11/12/1997)
11/12/1997	60	MOTION by Advanced Cardio Sys to Dismiss Answer Brief due 11/26/97 re: [60-1] motion (lf) (Entered: 11/12/1997)
11/12/1997	61	Opening Brief Filed by Advanced Cardio Sys [60-1] motion to Dismiss Answer Brief due 11/26/97 (lf) (Entered: 11/12/1997)
11/12/1997	62	MOTION by Advanced Cardio Sys with Proposed Order to Stay pending completion of reexamination of the 762 patent Answer Brief due 11/26/97 re: [62-1] motion (lf) (Entered: 11/12/1997)
11/12/1997	63	Opening Brief Filed by Advanced Cardio Sys [62-1] motion to Stay pending completion of reexamination of the 762 patent Answer Brief due 11/26/97 (SEALED) (lf) (Entered: 11/12/1997)
11/12/1997	64	Declaration of John Nagy (lf) (Entered: 11/12/1997)
11/12/1997	65	Declaration of Thomas Peterson (SEALED) (lf) (Entered: 11/12/1997)
11/12/1997	66	ANSWER to Complaint by Boston Scientific, Scimed Life Systems (Attorney), (lf) (Entered: 11/13/1997)
11/17/1997	70	Letter dated 11/17/97 from Frederick Cottrell, Esq. to Judge Robinson; Re: status as to the case (lf) (Entered: 11/21/1997)
11/17/1997	71	Letter dated 11/17/97 from Richard Moyer, Esq. to Judge Robinson; Re: Confirming the cancellation of hearing for 12/2/97 (lf) (Entered: 11/21/1997)
11/18/1997	67	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: responses to pltf's 1st rqst for production of documents and things (lf) (Entered: 11/19/1997)
11/18/1997	68	CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: 2nd set of interrogs to Cordis Corp. (nos. 12-13) (lf) (Entered: 11/19/1997)
11/18/1997	69	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: objections to pltf's 1st set of interrogs (nos. 1013) (lf) (Entered: 11/19/1997)
11/21/1997	72	CERTIFICATE OF SERVICE by Cordis Corporation; Re; Objections and responses to ACS's 1st set of rqsts for production of documents and things (lf) (Entered: 11/21/1997)
11/24/1997	73	MOTION by Boston Scientific, Scimed Life Systems improperly joined parties Boston Scientific Corp and Scimed Life Systems, Inc and stay the action as to those parties Answer Brief due 12/8/97 re: [73-1] motion (lf) (Entered: 11/25/1997)
11/24/1997	74	Opening Brief Filed by Boston Scientific, Scimed Life Systems [73-1] motion improperly joined parties Boston Scientific Corp and Scimed Life Systems, Inc and stay the action as to those parties - Answer Brief due 12/8/97 (lf) (Entered: 11/25/1997)
11/25/1997	83	TRANSCRIPT filed for dates of 11/5/97; Rptr: K. maurer (lf) (Entered: 11/28/1997)
11/26/1997	75	Answer Brief Filed by Cordis Corporation [58-1] motion to Dismiss - Reply Brief due 12/3/97; (SEALED) (lf) (Entered: 11/28/1997)

11/26/1997	76	Declaration of Lee P. Bendel in opposition to ACS's motion to dismiss for lack of standing (lf) (Entered: 11/28/1997)
11/26/1997	77	Declaration of Theodore Van Itallie, Jr. in opposition to Advanced Cardiovascular's motion to dismiss for lack of standing (SEALED) (lf) Modified on 11/28/1997 (Entered: 11/28/1997)
11/26/1997	78	Declaration of Philip Crowley in opposition to Advanced Cardiovascular's motion to dismiss for lack of standing (SEALED) (lf) Modified on 11/28/1997 (Entered: 11/28/1997)
11/26/1997	79	Answer Brief Filed by Cordis Corporation [60-1] motion to Dismiss - Reply Brief due 12/3/97 (SEALED) (lf) (Entered: 11/28/1997)
11/26/1997	80	Declaration of William Cavanaugh, Jr. in opposition to Guidant's motion to dismiss for lack of personal jurisdiction (SEALED) (lf) (Entered: 11/28/1997)
11/26/1997	81	Declaration of William Cavanaugh, Jr., in opposition to Advanced Cardiovascular's motion to dismiss got lack of standing (SEALED) (lf) (Entered: 11/28/1997)
11/26/1997	82	Answer Brief Filed by Cordis Corporation [62-1] motion to Stay pending completion of reexamination of the 762 patent - Reply Brief due 12/3/97 (lf) (Entered: 11/28/1997)
12/01/1997	84	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's initial disclosures (lf) (Entered: 12/03/1997)
12/01/1997	85	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: Objections and responses to pltf's 1st set of interogs (1-13) (lf) (Entered: 12/03/1997)
12/02/1997	86	CERTIFICATE OF SERVICE by Cordis Corporation re: response to deft's 1st set of interogs (lf) (Entered: 12/03/1997)
12/04/1997	87	NOTICE by Cordis Corporation to take deposition of Advanced Cardiovascular Systems, Inc. and Guidant Corp. and request for production (lf) (Entered: 12/08/1997)
12/05/1997	88	Letter dated 12/5/97 from Frederick Cottrell, Jr., Esq. to Judge Robinson; Re: rqsting oral argument (lf) (Entered: 12/08/1997)
12/05/1997	89	Reply Brief Filed by Advanced Cardio Sys [60-1] motion to Dismiss for lack of standing and/or failure to join necessary party(ies) (SEALED) (lf) (Entered: 12/08/1997)
12/05/1997	90	Reply Brief Filed by Guidant Corporation [58-1] motion to Dismiss for lack of personal jurisdiction (SEALED) (lf) (Entered: 12/08/1997)
12/05/1997	91	Reply Brief Filed by Advanced Cardio Sys [62-1] motion to Stay pending completion of reexamination of the 762 patent (SEALED) (lf) Modified on 12/08/1997 (Entered: 12/08/1997)
12/05/1997	92	Declaration of Bruce Barclay in support of Guidant's reply to Cordis'answering brief in opposition to Guidant's motion to dismiss (lf) (Entered: 12/08/1997)
12/09/1997	93	CERTIFICATE OF SERVICE by Cordis Corporation; Re: response to deft 2nd set of interogs (lf) (Entered: 12/16/1997)
12/09/1997	94	STIPULATION with proposed order; Filing answering brief to motion to sever by 12/16/97 (lf) (Entered: 12/16/1997)
12/16/1997	--	So Ordered granting [94-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 12/18/1997)
12/17/1997	95	CROSS MOTION by Cordis Corporation to Consolidate Cases Opening brief due 12/31/97 re: [95-1] cross motion (lf) (Entered: 12/18/1997)
12/17/1997	96	Answering brief in oppsition to Boston Scientific's and Scimed's motion to sever certain parties and Opening Brief Filed by Cordis Corporation [95-1] cross motion to Consolidate Cases - Answer Brief due 12/31/97 (lf) (Entered: 12/18/1997)
12/17/1997	97	RE-NOTICE by Advanced Cardio Sys to take deposition of Nigel Buller on 12/20/97 (lf) (Entered: 12/18/1997)
12/17/1997	98	ORDER, expedited discovery period shall conclude on 3/16/98; see order for details (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 12/22/1997)
12/22/1997	99	STIPULATION with proposed order answering brief in opposition to motion to sever due 1/9/98 (lf) (Entered: 12/23/1997)
12/22/1997	100	NOTICE by Advanced Cardio Sys to take deposition of Richard Stringfellow on (lf) (Entered: 12/23/1997)
12/22/1997	101	NOTICE by Advanced Cardio Sys to take deposition of Ben Tober (lf) (Entered: 12/23/1997)
12/22/1997	102	NOTICE by Advanced Cardio Sys to take deposition of Stewart Windeler (lf) (Entered: 12/23/1997)

12/22/1997	103	NOTICE by Advanced Cardio Sys to take deposition of Nan Laird (lf) (Entered: 12/23/1997)
12/22/1997	104	NOTICE by Advanced Cardio Sys to take deposition of John Kula (lf) (Entered: 12/23/1997)
12/22/1997	105	NOTICE by Advanced Cardio Sys to take deposition of John Collins (lf) (Entered: 12/23/1997)
12/22/1997	106	NOTICE by Advanced Cardio Sys to take deposition of Richard Bowman on 1/5/98 (lf) (Entered: 12/23/1997)
12/23/1997	107	RE-NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Marvin Woodall on 1/16/98 (lf) (Entered: 01/05/1998)
12/23/1997	--	So Ordered granting [99-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 01/06/1998)
12/26/1997	108	NOTICE by Cordis Corporation to take deposition of Ginger Howard on 1/5/98 (lf) (Entered: 01/05/1998)
12/26/1997	109	NOTICE by Cordis Corporation to take deposition of Beverly Huss on 1/6/98 (lf) (Entered: 01/05/1998)
12/26/1997	110	NOTICE by Cordis Corporation to take deposition of Joe Tartaglia on 1/7/98 (lf) (Entered: 01/05/1998)
12/26/1997	111	NOTICE by Cordis Corporation to take deposition of Gerald Hausman, Ph.D on 1/19/98 (lf) (Entered: 01/05/1998)
12/26/1997	112	NOTICE by Cordis Corporation to take deposition of Elazer Edelman, M.D. on 1/13/98 (lf) (Entered: 01/05/1998)
12/26/1997	113	NOTICE by Cordis Corporation to take deposition of Gary Johnson on 1/12/98 (lf) (Entered: 01/05/1998)
12/26/1997	114	NOTICE by Cordis Corporation to take deposition of Herman Kalman Gold on 1/9/98 (lf) (Entered: 01/05/1998)
12/26/1997	115	NOTICE by Cordis Corporation to take deposition of Gary Schneidermanm Ph.D on 1/8/98 (lf) (Entered: 01/05/1998)
12/26/1997	116	NOTICE by Cordis Corporation to take deposition of Thomas Linnemeier on 1/15/98 (lf) (Entered: 01/05/1998)
12/29/1997	117	MOTION by Cordis Corporation with Proposed Order for Preliminary Injunction against Arterial Vascular Engineering, Inc. Answer Brief due 1/12/98 re: [117-1] motion (lf) (Entered: 01/05/1998)
12/29/1997	118	Opening Brief Filed by Cordis Corporation [117-1] motion for Preliminary Injunction against Arterial Vascular Engineering, Inc. - Answer Brief due 1/12/98 (lf) (Entered: 01/05/1998)
12/29/1997	119	Declaration of Lee Bendel (lf) (Entered: 01/05/1998)
12/29/1997	120	Declaration of Marvin Woodall (lf) (Entered: 01/05/1998)
12/30/1997	121	NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Dr. Campbell Rogers on 1/7/98 (lf) (Entered: 01/05/1998)
12/30/1997	122	RE-NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Brian Firth on 1/8/98 (lf) (Entered: 01/05/1998)
01/02/1998	123	RE_NOTICE by Advanced Cardio Sys to take deposition of Richard Bowman on 1/9/98 (lf) (Entered: 01/05/1998)
01/02/1998	124	RE-NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Richard Schatz, M.D. on 1/8/98 (lf) (Entered: 01/05/1998)
01/08/1998	125	NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Dr. Renu Virmani on 1/16/98 (lf) (Entered: 01/14/1998)
01/09/1998	126	Reply Brief Filed by Boston Scientific, Scimed Life Systems [73-1] motion improperly joined parties Boston Scientific Corp and Scimed Life Systems, Inc and stay the action as to those parties and answering brief in opposition to Cordis' cross-motion to consolidated three Distinct Proceedings (lf) (Entered: 01/14/1998)
01/13/1998	127	Letter dated 1/13/98 from Josy Ingersoll, Esq. to Judge Robinson; Re: rqsting oral argument with respect to BSC's motion to sever (lf) (Entered: 01/14/1998)
01/14/1998	128	STIPULATION with proposed order for pltf to reply to cross motion for consolidation by 1/27/98 (lf) (Entered: 01/20/1998)
01/15/1998	129	Letter dated 1/15/98 from Steven Balick, Esq. to Judge Robinson; Re: rqsting oral argument on motion for preliminary injunction (lf) (Entered: 01/20/1998)

01/15/1998	134	ORDER, oral argument scheduled for 1/26/98 (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 01/20/1998)
01/16/1998	130	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Plt's 1st set of interrogs to Arterial Vascular Engineering, Inc. (lf) (Entered: 01/20/1998)
01/16/1998	131	CERTIFICATE OF SERVICE by Cordis Corporation; re: Plt's 1st rqst for production of documents and things to Arterial Vascular Engineerings (lf) (Entered: 01/20/1998)
01/16/1998	132	Letter dated 1/16/98 from Fredrick Cottrell, Esq. to Judge Robinson; Re: filing supplemental brief to motion to stay (lf) (Entered: 01/20/1998)
01/16/1998	133	SUPPLEMENTAL BRIEF by Advanced Cardio Sys in support of motion for stay pending completion of reexamination of certain patent in suit (SEALED) (lf) (Entered: 01/20/1998)
01/20/1998	--	So Ordered granting [128-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 01/22/1998)
01/20/1998	135	MOTION by Cordis Corporation with Proposed Order for Gregory Diskant, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/22/1998)
01/20/1998	136	MOTION by Cordis Corporation with Proposed Order for Michael Timmons Esq. to Appear Pro Hac Vice (lf) (Entered: 01/22/1998)
01/20/1998	137	MOTION by Cordis Corporation with Proposed Order for William Cavanaugh, Jr., Esq. to Appear Pro Hac Vice (lf) (Entered: 01/22/1998)
01/21/1998	138	Letter dated 1/21/98 from N. Richard Powers, Esq to Judge Robinson; Re: enclosing two letters from William Wallace, III, esq. (lf) (Entered: 01/22/1998)
01/22/1998	139	NOTICE by Advanced Cardio Sys to take deposition of Richard Kuntz, M.D. on 1/27/98 at 9:00am (lf) (Entered: 01/28/1998)
01/22/1998	140	AMENDED MOTION by Cordis Corporation for Preliminary Injunction Answer Brief due 2/5/98 re: [140-1] motion (lf) (Entered: 01/28/1998)
01/23/1998	141	MOTION by Cordis Corporation with Proposed Order for Andrew Schau, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/28/1998)
01/23/1998	142	MOTION by Cordis Corporation for Thomas Pippert, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/28/1998)
01/23/1998	143	MOTION by Cordis Corporation for John DiMatteo, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/28/1998)
01/23/1998	144	MOTION by Cordis Corporation with Proposed Order for Eugene Gelernter, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/28/1998)
01/23/1998	145	MOTION by Cordis Corporation with Proposed Order for Margaret Sparks, Esq. to Appear Pro Hac Vice (lf) (Entered: 01/28/1998)
01/23/1998	--	So Ordered granting [137-1] motion for William Cavanaugh, Jr., Esq. to Appear Pro Hac Vice, granting [136-1] motion for Michael Timmons Esq. to Appear Pro Hac Vice, granting [135-1] motion for Gregory Diskant, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 01/29/1998)
01/26/1998	146	Letter dated 1/26/98 from Stephen Jenkins, Esq. to Judge Robinson; Re filing sealed declaration and exhibit (lf) (Entered: 01/28/1998)
01/26/1998	147	Declaration of Richard Schatz (SEALED) (lf) (Entered: 01/28/1998)
01/26/1998	--	Motion hearing re: [140-1] motion for Preliminary Injunction; Robinson, J., sitting; Rptr: B. Gaffigan (lf) (Entered: 01/29/1998)
01/27/1998	148	Reply Brief Filed by Cordis Corporation [95-1] cross motion to Consolidate Cases (lf) (Entered: 01/28/1998)
01/27/1998	149	Letter dated 1/26/98 from Frederick Cottrell, Jr., Esq. to Judge Robinson; Re; Agenda for 1/26/98 hearing (lf) (Entered: 01/28/1998)
01/27/1998	150	Steno Notes for 1/26/98; Rptr: B. Gaffigan (lf) (Entered: 01/28/1998)
01/28/1998	--	So Ordered granting [145-1] motion for Margaret Sparks, Esq. to Appear Pro Hac Vice, granting [144-1] motion for Eugene Gelernter, Esq. to Appear Pro Hac Vice, granting [143-1] motion for John DiMatteo, Esq. to Appear Pro Hac Vice, granting [142-1] motion for Thomas Pippert, Esq. to Appear Pro Hac Vice, granting [141-1] motion for Andrew Schau, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 02/03/1998)
01/29/1998	151	TRANSCRIPT filed for dates of 1/26/98; Rptr: B. Gaffigan (lf) (Entered: 02/03/1998)

02/02/1998	152	Letter dated 2/2/98 from Frederick Cottrell, Jr., Esq. to Judge Robinson (SEALED) (lf) (Entered: 02/03/1998)
02/02/1998	153	Letter dated 2/2/98 from Steven Balick, Esq. to Judge Robinson; (SEALED) (lf) (Entered: 02/03/1998)
02/03/1998	154	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: 1st supplemental response to pltf's 1st set of interrogs (no.11) (lf) (Entered: 02/04/1998)
02/03/1998	155	Letter dated 2/3/98 from Fredrick Cottrell, III, Esq. to Judge Robinson; (SEALED) (lf) (Entered: 02/04/1998)
02/06/1998	156	MOTION by Cordis Corporation with Proposed Order to Consolidate Cases 97-550 and 98-65 Answer Brief due 2/20/98 re: [156-1] motion (lf) (Entered: 02/09/1998)
02/06/1998	157	MOTION by Cordis Corporation to Amend complaint Answer Brief due 2/20/98 re: [157-1] motion (lf) (Entered: 02/09/1998)
02/06/1998	158	MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Craig Bailey, Esq. to Appear Pro Hac Vice (lf) (Entered: 02/09/1998)
02/06/1998	159	MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Tavares Erickson, Esq. to Appear Pro Hac Vice (lf) (Entered: 02/09/1998)
02/06/1998	160	MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Henry Ricardo, Esq. to Appear Pro Hac Vice (lf) (Entered: 02/09/1998)
02/06/1998	161	ORDER, motion to stay will considered at the Preliminary Injunction hearing; each party will be given 14 hours for the hearing (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/09/1998)
02/06/1998	162	ORDER granting in part, denying in part [60-1] motion to Dismiss (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/09/1998)
02/09/1998	--	So Ordered granting [160-1] motion for Henry Ricardo, Esq. to Appear Pro Hac Vice, granting [159-1] motion for Tavares Erickson, Esq. to Appear Pro Hac Vice, granting [158-1] motion for Craig Bailey, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 02/11/1998)
02/09/1998	163	Letter dated 2/9/98 from Steven Balick, Esq. to Judge Robinson; Re: writing to court about agenda for evidentiary hearing (lf) (Entered: 02/11/1998)
02/09/1998	--	Evidentiary hearing held, Robinson, J. sitting; Rptr: V. Gunning (lf) (Entered: 02/11/1998)
02/09/1998	164	Letter dated 2/9/98 from Fred Cottrell, III, Esq. to Judge Robinson (SEALED) (lf) (Entered: 02/11/1998)
02/10/1998	--	Motion hearing re: [140-1] motion for Preliminary Injunction, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 02/11/1998)
02/11/1998	--	Motion hearing, Robinson, J., sitting (lf) (Entered: 10/05/1999)
02/12/1998	--	Motion hearing, Robinson, J., sitting; (lf) (Entered: 10/05/1999)
02/13/1998	--	Motion hearing, Robinson, J., sitting (lf) (Entered: 10/05/1999)
02/19/1998	165	TRANSCRIPT filed [0-0] evidentiary hearing for dates of 2/9/98; Vol. A; Rptr: V. Gunning (lf) (Entered: 02/20/1998)
02/19/1998	166	TRANSCRIPT filed [0-0] motion hearing for dates of 2/10/98; Rptr: V. Gunning; Vol. B (lf) (Entered: 02/20/1998)
02/19/1998	167	TRANSCRIPT filed for dates of 2/11/98; Rptr: V. Gunning; Vol. C (lf) (Entered: 02/20/1998)
02/19/1998	168	TRANSCRIPT filed for dates of 2/12/98; Rptr: V. Gunning; Vol. D (lf) (Entered: 02/20/1998)
02/19/1998	169	TRANSCRIPT filed for dates of 2/13/98; Rptr: V. Gunning; Vol. E (lf) (Entered: 02/20/1998)
02/19/1998	170	EXCERPT TRANSCRIPT of Schatz - direct filed for dates of 2/10/98; Rptr: V. Gunning (SEALED) (lf) (Entered: 02/20/1998)
02/19/1998	171	EXCERPT TRANSCRIPT of Croce - direct filed for dates of 2/12/98; Rptr: V. Gunning; SEALED (lf) (Entered: 02/20/1998)
02/19/1998	172	Excerpt TRANSCRIPT filed for dates of 2/13/98; Rptr: V. Gunning; Vol E; (SEALED) (lf) (Entered: 02/20/1998)
02/19/1998	173	Excerpted TRANSCRIPT of Vol. E filed for dates of 2/13/98; Rptr: V. Gunning (SEALED) (lf) (Entered: 02/20/1998)
02/20/1998	174	Letter dated 2/20/98 from Steven Balick, Esq. to Judge Robinson; Re: rqsting assistance

regarding certain discovery and scheduling disputes (lf) (Entered: 02/25/1998)

02/23/1998 175 MOTION by Arterial Vascular with Proposed Order to Dismiss Answer Brief due 3/9/98 re: [175-1] motion (lf) (Entered: 02/25/1998)

02/23/1998 176 Opening Brief Filed by Arterial Vascular [175-1] motion to Dismiss - Answer Brief due 3/9/98 (lf) (Entered: 02/25/1998)

02/25/1998 177 Letter dated 2/25/98 from Patricia Smink Rogowski, Esq. to Judge Robinson; Re: attaching letter from William Wallace, III, Esq. (lf) (Entered: 02/25/1998)

03/02/1998 178 Answer Brief Filed by Advanced Cardio Sys [157-1] motion to Amend complaint - Reply Brief due 3/9/98, [156-1] motion to Consolidate Cases 97-550 and 98-65 - Reply Brief due 3/9/98, [140-1] motion for Preliminary Injunction - Reply Brief due 3/9/98 (lf) (Entered: 03/11/1998)

03/03/1998 179 TRANSCRIPT filed for dates of 2/4/98; Rptr: V. Gunnign (lf) (Entered: 03/11/1998)

03/03/1998 180 Letter dated 3/3/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: ruling CA 97-305 RRM CR Bard v. Guidant (lf) (Entered: 03/11/1998)

03/06/1998 181 Letter dated 3/6/98 from Josy Ingersoll, Esq. to Judge Robinson attaching SEALED letter to the court (lf) (Entered: 03/11/1998)

03/09/1998 182 Letter dated 3/9/98 from Steven Balick, Esq. to Judge Robinson; Re: response to Josy Ingersoll, Esq. letter to the court dated 3/5/98 (lf) (Entered: 03/11/1998)

03/09/1998 226 Post-hearing Opening Brief Filed by Cordis Corporation in support of motion for a preliminary injunction (SEALED) (lf) (Entered: 04/17/1998)

03/10/1998 183 MOTION by Arterial Vascular with Proposed Order for Eric Maurer, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 184 MOTION by Arterial Vascular with Proposed Order for Peter Boyle, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 185 MOTION by Arterial Vascular with Proposed Order for Penelope Lister, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 186 MOTION by Arterial Vascular with Proposed Order for John Williamson, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 187 MOTION by Arterial Vascular with Proposed Order for Scott Stempel, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 188 MOTION by Arterial Vascular with Proposed Order for William Wallace, III, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 189 MOTION by Arterial Vascular with Proposed Order for Richard Meyer, Esq to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 190 MOTION by Arterial Vascular with Proposed Order for D. Michael Underhill, Esq. to Appear Pro Hac Vice (lf) (Entered: 03/11/1998)

03/10/1998 191 Letter dated 3/10/98 from Steven Balick, Esq. to Judge Robinson (SEALED) (lf) (Entered: 03/11/1998)

03/11/1998 -- So Ordered granting [190-1] motion for D. Michael Underhill, Esq. to Appear Pro Hac Vice, granting [189-1] motion for Richard Meyer, Esq to Appear Pro Hac Vice, granting [188-1] motion for William Wallace, III, Esq. to Appear Pro Hac Vice, granting [187-1] motion for Scott Stempel, Esq. to Appear Pro Hac Vice, granting [186-1] motion for John Williamson, Esq. to Appear Pro Hac Vice, granting [185-1] motion for Penelope Lister, Esq. to Appear Pro Hac Vice, granting [184-1] motion for Peter Boyle, Esq. to Appear Pro Hac Vice, granting [183-1] motion for Eric Maurer, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/16/1998)

03/11/1998 192 Letter dated 3/11/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: filing cross reference list for courts convenience (lf) (Entered: 03/16/1998)

03/12/1998 193 Letter dated 3/12/98 from Steven Balick, Esq. to Judge Robinson; Re: EGP waives right to file separate post-hearing opening brief (lf) (Entered: 03/16/1998)

03/13/1998 194 Answer Brief Filed by Cordis Corporation [175-1] motion to Dismiss - Reply Brief due 3/20/98 and reply brief in support of pltf's motions to amend the complaint and to consolidate this action with CA No 98-65 (lf) (Entered: 03/16/1998)

03/16/1998 195 Letter dated 3/16/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: cnsl available for oral argument (lf) (Entered: 03/19/1998)

03/16/1998 196 Letter dated from 3/16/98 Steven Balick, Esq. to Judge Robinson; Re: agreement as to filing preliminary injunction hearing exhibits (lf) (Entered: 03/19/1998)

03/16/1998	197	Letter (lf) (Entered: 03/19/1998)
03/17/1998	198	Steno Notes for 3/17/98; Rptr: L. Dibbs (lf) (Entered: 03/19/1998)
03/17/1998	--	Tele-conference held, Robinson, J., sitting; Rptr: L. Dibbs (lf) (Entered: 10/05/1999)
03/18/1998	199	ORDER, discovery completed by 5/29/98; telecnf. scheduled for 6/10/98 and evidentiary hearing scheduled for 6/22/98 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 03/19/1998)
03/18/1998	--	So Ordered granting [156-1] motion to Consolidate Cases 97-550 and 98-65 (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/19/1998)
03/18/1998	--	So Ordered granting [157-1] motion to Amend complaint (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/19/1998)
03/18/1998	200	SECOND AMENDED COMPLAINT by Cordis Corporation , (Answer due 3/30/98 for Scimed Life Systems, for Boston Scientific, for Arterial Vascular, for Guidant Corporation, for Advanced Cardio Sys) amending [14-1] amended complaint (lf) (Entered: 03/19/1998)
03/19/1998	201	STIPULATION with proposed order; Cordis'combined answering brief in opposition to Ave's motion to dismiss and reply brief in support of COrdis motion to amend the complaint and to consolidate this action with CA 98-65 (lf) (Entered: 03/19/1998)
03/23/1998	--	So Ordered granting [201-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/24/1998)
03/25/1998	202	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 1st set of rqsts for production of documents and things to pltf Cordis Corps. (nos. 1-73) (lf) (Entered: 03/26/1998)
03/25/1998	203	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 1st set of rqst for production of documents and things to pltf Expandable Grafts Partnership (nos. 1-69) (lf) (Entered: 03/26/1998)
03/25/1998	204	CERTIFICATE OF SERVICE by Arterial Vascular; Re: Deft's 1st set of interrgs to pltf (nos. 1-17) (lf) (Entered: 03/26/1998)
03/25/1998	205	CERTIFICATE OF SERVICE by Arterial Vascular; Re: Deft 1st set of interrgs to pltf Expandable Grafts Partnership (nos. 1-16) (lf) (Entered: 03/26/1998)
03/26/1998	206	STIPULATION with proposed order; Re: for ACS and Guidant to answer by 4/8/98 (lf) (Entered: 03/27/1998)
03/27/1998	207	TRANSCRIPT filed for dates of 3/17/98; Rptr: L. Dibbs (lf) (Entered: 03/30/1998)
03/27/1998	208	Answer Brief Filed by Advanced Cardio Sys [140-1] motion for Preliminary Injunction - Reply Brief due 4/3/98 (SEALED) (lf) (Entered: 03/30/1998)
03/27/1998	--	So Ordered granting [206-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/01/1998)
03/31/1998	209	MOTION by Arterial Vascular with Proposed Order to Dismiss Arterial Vascular Engineering, Inc. from 98-65 Answer Brief due 4/14/98 re: [209-1] motion (lf) (Entered: 04/06/1998)
03/31/1998	210	Opening Brief Filed by Arterial Vascular [209-1] motion to Dismiss Arterial Vascular Engineering, Inc. from 98-65 - Answer Brief due 4/14/98 (lf) (Entered: 04/06/1998)
04/08/1998	211	MOTION by Guidant Corporation with Proposed Order to Dismiss Answer Brief due 4/22/98 re: [211-1] motion (lf) (Entered: 04/08/1998)
04/08/1998	212	ANSWER to amended complaint and COUNTERCLAIM by Advanced Cardio Sys (Attorney) against Cordis Corporation (lf) (Entered: 04/13/1998)
04/08/1998	213	ORDER, oral argument on pltf's motion for preliminary injunction to be held on 4/24/98 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 04/13/1998)
04/08/1998	--	Motion hearing re: [140-1] motion for Preliminary Injunction at 4/24/98 (lf) (Entered: 04/13/1998)
04/10/1998	214	Post-Hearing Reply Brief Filed by Cordis Corporation in support of its motion for a preliminary injunction (SEALED) (lf) (Entered: 04/13/1998)
04/13/1998	216	MOTION by Cordis Corporation, Expandable Grafts with Proposed Order for Preliminary Injunction against Boston Scientific Corp. and Scimed Life Systems, Inc. Answer Brief due 4/27/98 re: [216-1] motion (lf) (Entered: 04/14/1998)
04/13/1998	217	Opening Brief Filed by Cordis Corporation, Expandable Grafts [216-1] motion for Preliminary Injunction against Boston Scientific Corp. and Scimed Life Systems, Inc. - Answer Brief due 4/27/98 (lf) (Entered: 04/14/1998)
04/13/1998	218	Declaration of Lee Bendel (lf) (Entered: 04/14/1998)

04/14/1998 -- Consolidated Lead Case civil action 97-550 and 98-65 consolidated. (lf) (Entered: 04/14/1998)

04/14/1998 215 STIPULATION with proposed order pltf's answering brief is due in opposition to the motion to dismiss Arterial Vascular Engineering Inc. from Civil Action No. 98-65 is extended to 4/21/98 (lf) (Entered: 04/14/1998)

04/14/1998 -- So Ordered granting [215-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/14/1998)

04/14/1998 219 MOTION by Cordis Corporation, Expandable Grafts with Proposed Order to Consolidate Preliminary Injunction motions against BSC and AVE (lf) (Entered: 04/15/1998)

04/14/1998 220 Opening Brief Filed by Cordis Corporation, Expandable Grafts [219-1] motion to Consolidate Preliminary Injunction motions against BSC and AVE - Answer Brief due 4/28/98 (lf) (Entered: 04/15/1998)

04/14/1998 221 Declaration of Steve Schiess (lf) (Entered: 04/15/1998)

04/15/1998 222 Letter dated 4/15/98 from Steve Balick, Esq. to Judge Robinson; Re: Status as to all the Cordis cases (lf) (Entered: 04/16/1998)

04/15/1998 223 MOTION by Cordis Corporation with Proposed Order to Bifurcate Arterial Vascular Engineering's Inc Antitrust claims. to stay discovery on those claims, and to consolidate the related actions Answer Brief due 4/29/98 re: [223-1] motion (lf) (Entered: 04/16/1998)

04/15/1998 224 Opening Brief Filed by Cordis Corporation [223-1] motion to Bifurcate Arterial Vascular Engineering's Inc Antitrust claims. to stay discovery on those claims, and to consolidate the related actions - Answer Brief due 4/29/98 (lf) (Entered: 04/16/1998)

04/15/1998 225 ANSWER by Boston Scientific, Scimed Life Systems (Attorney) to amended complaint (lf) (Entered: 04/16/1998)

04/17/1998 227 Letter dated 4/17/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: enclosing decision in related case Prefered Risk Financial v. Guidant Corp in SD Iowa - addressing jurisdiction over Guidant in a trademark dispute (lf) (Entered: 04/20/1998)

04/17/1998 228 Letter dated 4/17/98 from Josy Ingersoll, Esq. to Judge Robinson; Re: response to 4/15/98 letter from counsel for Cordis Corp. and Expandable Grafts Partnership (lf) (Entered: 04/20/1998)

04/21/1998 229 Answer Brief Filed by Cordis Corporation [209-1] motion to Dismiss Arterial Vascular Engineering, Inc. from 98-65 - Reply Brief due 4/28/98 (lf) (Entered: 04/22/1998)

04/23/1998 230 ORDER, general organizational meeting to be held on 5/1/98 at 10:00am (related cases are 97-635; 97-700; 98-19 and 98-197) (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 04/24/1998)

04/23/1998 231 Answer Brief Filed by Cordis Corporation [211-1] motion to Dismiss - Reply Brief due 4/30/98 (lf) (Entered: 04/24/1998)

04/23/1998 232 CERTIFICATE OF SERVICE by Expandable Grafts; Re: EGP's answers and objections to AVE's 1st set of interogs (lf) (Entered: 04/24/1998)

04/23/1998 233 CERTIFICATE OF SERVICE by Expandable Grafts; Re: EGP's responses and objections to AVE's 1st set of rqst for production (lf) (Entered: 04/24/1998)

04/23/1998 234 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Objections' and responses to deft Arterial Vascular Engineering, Inc.'s 1st set of interogs to pltf (nos. 1-17) (lf) (Entered: 04/24/1998)

04/23/1998 235 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's objections and responses to deft Arterial Vascular Engineering, Inc's 1st set of rqst for production of documents and things to pltf (nos. 1-73) (lf) (Entered: 04/24/1998)

04/24/1998 -- Motion hearing held, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 04/24/1998)

04/28/1998 236 Reply Brief Filed by Arterial Vascular [209-1] motion to Dismiss Arterial Vascular Engineering, Inc. from 98-65 (lf) (Entered: 04/29/1998)

04/28/1998 237 ANSWER by Cordis Corporation to [212-2] counter claim (lf) (Entered: 04/29/1998)

04/28/1998 238 ANSWER by Expandable Grafts to [212-2] counter claim (lf) (Entered: 04/29/1998)

04/28/1998 239 Answer Brief Filed by Boston Scientific, Scimed Life Systems [219-1] motion to Consolidate Preliminary Injunction motions against BSC and AVE - Reply Brief due 5/5/98 (lf) (Entered: 04/29/1998)

04/29/1998 240 Answer Brief Filed by Arterial Vascular [223-1] motion to Bifurcate Arterial Vascular Engineering's Inc Antitrust claims. to stay discovery on those claims, and to consolidate the related actions - Reply Brief due 5/6/98 (lf) (Entered: 04/30/1998)

04/30/1998	241	Letter dated 4/30/98 from Josy Ingersoll, Esq. to Judge Robinson; Re: filing proposed case management agenda for 5/1/98 cnf. (lf) (Entered: 05/01/1998)
04/30/1998	242	NOTICE of proposed management by Boston Scientific, Scimed Life Systems (lf) (Entered: 05/01/1998)
04/30/1998	243	Letter dated 4/30/98 from Steven Balick, Esq. to Judge Robinson; Re: Agenda for case management meeting (lf) (Entered: 05/01/1998)
04/30/1998	244	CERTIFICATE OF SERVICE by Arterial Vascular; Re: Deft's responses to pltf's 1st sert of interrogs nos. 1-13 (lf) (Entered: 05/01/1998)
04/30/1998	245	CERTIFICATE OF SERVICE by Arterial Vascular; Re: Deft's responses to pltf's 1st rqst for proeuction of documents and things nos. 1-27 (lf) (Entered: 05/01/1998)
05/01/1998	--	Evidentiary (case management) hearing held, Robinson, J., sitting; Rptr: K. Maurer (lf) (Entered: 05/01/1998)
05/07/1998	246	Notice of Subpoena for Failure Analysis Assoc., Inc. (lf) (Entered: 05/07/1998)
05/07/1998	247	TRANSCRIPT filed [0-0] evidentiary hearing for dates of 5/1/98; Rptr: K. Maurer (lf) (Entered: 05/07/1998)
05/11/1998	248	Letter dated 5/11/98 from Patricia Rogowski, Esq. to Judge Robinson; Re: agenda for discovery dispute telec. (lf) (Entered: 05/13/1998)
05/12/1998	249	Steno Notes for 5/1/98; Rptr: K. Maurer (lf) (Entered: 05/13/1998)
05/12/1998	250	CERTIFICATE OF SERVICE by Cordis Corporation; Amended objections and responses to deft Arterial Vascular Engineering, Inc.'s 1st set of rqst for production of documents and things to pltf (nos.1-72) (lf) (Entered: 05/13/1998)
05/12/1998	251	Letter dated 5/12/98 from Steven Balick, Esq. to Judge Robinson; Re: agenda for telecnf. (lf) (Entered: 05/13/1998)
05/12/1998	--	Tele-conference held, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 10/05/1999)
05/13/1998	252	TRANSCRIPT filed for dates of 5/1/98; Rptr: K. Maurer (lf) (Entered: 05/14/1998)
05/13/1998	253	TRANSCRIPT filed for dates of 5/12/98; rptr: V. Gunning (lf) (Entered: 05/14/1998)
05/13/1998	254	ORDER, document production relating to pltf's motion for a preliminary injunction against deft AVE (and discovery through interrogs) shall be completed by 5/22/98; evidentiary hearing presently scheduled for week of 6/22/98 is rescheduled to 7/21/98 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 05/14/1998)
05/14/1998	--	Evidentiary hearing set at 7/21/98 (lf) (Entered: 05/14/1998)
05/21/1998	255	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 2nd set of rqst for production of documents and things to pltf (nos 74-80) (lf) (Entered: 05/22/1998)
05/22/1998	256	TRANSCRIPT filed [0-0] motion hearing for dates of 4/24/98; Rptr: L. Dibbs/V. Gunning (lf) (Entered: 05/22/1998)
05/22/1998	257	Letter dated 5/22/98 from Frederick Cottrell, III, Esq. to Judge Robinson; Re: defts invites court ro consider the analysis of the scope and content of the prior art made by the Court of Appeals at the Hague in the decision enclosed (lf) (Entered: 05/26/1998)
05/26/1998	258	CERTIFICATE OF SERVICE by Arterial Vascular; deft 1st set of rqst for production of documents and things to Advanced Cardiovascular Systems (lf) (Entered: 05/27/1998)
05/29/1998	259	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Cordis 1st rqst for documents and things (lf) (Entered: 06/01/1998)
05/29/1998	260	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Cordis 1st set of interrogs (lf) (Entered: 06/01/1998)
05/29/1998	261	Letter dated 5/29/98 from John Grimm, Esq. to Judge Robinson; Re: response to letter to the court dated 5/22/98 (lf) (Entered: 06/01/1998)
06/15/1998	262	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Objections and responses to Arterial Vascular Engineering, Inc. and 2nd set of rqst for production of documents and things (lf) (Entered: 06/16/1998)
06/16/1998	263	Letter dated 6/16/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: enclosing for courts review recently issued Office Action in reexamination dated 6/1/98 (lf) (Entered: 06/29/1998)
06/22/1998	264	CERTIFICATE OF SERVICE by Advanced Cardio Sys objections and responses to deft Arterial Vasculars 1st set of rqst for production of documents (lf) (Entered: 06/29/1998)
06/23/1998	265	Letter dated 6/23/98 from Stven Balick, Esq. to Judge Robinson; Re; two recent

developements that affect Cordis' pending motion for preliminary injunction and response to ACS's letter of 6/16/98 (lf) (Entered: 06/29/1998)

06/26/1998 266 ORDER denying [52-1] motion to Dismiss amended complaint (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 06/30/1998)

06/29/1998 267 Letter dated 6/29/98 from Steven Balick, Esq. to Judge Robinson; Re: rqst telecnf. to discuss scheduling depositions and other matters in preparation for the 7/22/98 hearing (lf) (Entered: 07/01/1998)

06/29/1998 268 Letter dated 6/29/98 from Frederick Cottrell, Esq. to Judge Robinson (SEALED) (lf) (Entered: 07/01/1998)

06/30/1998 269 Letter dated 6/30/98 from Frederick Cottrell, Esq. to Judge Robinson; enclosing page 9 of the Office Action in Reexamination dated 6/1/98 (lf) (Entered: 07/01/1998)

07/01/1998 270 Letter dated 7/1/98 from Patricia Rogowski, Esq. to Judge Robinson; Re: response to Mr. Balick's letter of 6/29/98 (lf) (Entered: 07/02/1998)

07/02/1998 271 Letter dated 7/2/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: ACS response to AVS's letter to the court of 7/1/98 (lf) (Entered: 07/06/1998)

07/02/1998 272 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's supplemental objection and responses to defts 1st set of interrogs (nos. 1,2,5,7,8,11,13 and 16) (lf) (Entered: 07/06/1998)

07/02/1998 -- Tele-conference held, Robinson, J., sitting; Rptr: B. Gaffigan (lf) (Entered: 07/07/1998)

07/06/1998 273 TRANSCRIPT filed for dates of 7/2/98; Rptr: B. Gaffigan (lf) (Entered: 07/07/1998)

07/07/1998 -- Tele-conference held, Robinson, J., sitting; Rptr: K. Maurer (lf) (Entered: 07/07/1998)

07/07/1998 274 Letter dated 7/7/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: enclosing letter to cnsl for AVE (lf) (Entered: 07/09/1998)

07/07/1998 275 ORDER, schedule for preliminary injunction hearing on 7/21/98 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 07/09/1998)

07/07/1998 276 Steno Notes for 7/7/98; Rptr: K. Maurer (lf) (Entered: 07/09/1998)

07/08/1998 277 Steno Notes for 7/2/98; Rptr: B. Gaffigan (lf) (Entered: 07/09/1998)

07/08/1998 278 TRANSCRIPT filed for dates of 7/7/98; Rptr: Kevin Maurer (lf) Modified on 11/19/1999 (Entered: 07/09/1998)

07/09/1998 279 NOTICE by Arterial Vascular to take deposition of Cordis Corp. on (lf) (Entered: 07/09/1998)

07/14/1998 280 CERTIFICATE OF SERVICE by Expandable Grafts Partnership; Re: EGP's first supplemental answers to AVE's 1st set of interrogs (lf) (Entered: 07/15/1998)

07/15/1998 281 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re; responses to Cordis Corp.'s 1st rqst for documents and things (lf) (Entered: 07/16/1998)

07/15/1998 282 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: Objections and responses to Cordis Corp's 1st set of interrogs (lf) (Entered: 07/16/1998)

07/17/1998 283 CERTIFICATE OF SERVICE by Expandable Grafts; 1st supplemental answers to AVE's 1st set of interrogs (lf) (Entered: 07/20/1998)

07/17/1998 284 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 07/20/1998)

07/17/1998 285 ORDER denying [140-1] motion for Preliminary Injunction (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 07/20/1998)

07/20/1998 286 Letter dated 7/20/98 from Steven Balick, Esq. to Judge Robinson; Re: Cordis withdrawing motion for preliminary injunction against arterial vascular engineering (lf) (Entered: 07/21/1998)

07/20/1998 -- Tele-conference held, Robinson, J., sitting; Rptr: L. Dibbs (lf) (Entered: 10/05/1999)

07/23/1998 287 Letter dated 7/23/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: response to 7/20/98 telephonic hearing in which court invited parties to supplement their outstanding motions (lf) (Entered: 07/24/1998)

07/28/1998 288 Letter dated 7/28/98 from Steven Balick, Esq. to Judge Robinson; Re: agenda for 8/3/98 status cnf. (lf) (Entered: 07/29/1998)

07/30/1998 289 Letter dated 7/30/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: ACS submitting letter as a follow up to 7/23/98 letter to the court (lf) (Entered: 07/31/1998)

07/31/1998	290	Letter dated 7/31/98 from Steven Balick, Esq. to Judge Robinson; Re: outlining issues to be addressed at the status cnf. on 8/3/98 (lf) (Entered: 08/03/1998)
08/03/1998	--	Scheduling conference held, Robinson, J., sitting; Rptr: Heather Alford (lf) (Entered: 10/05/1999)
08/04/1998	291	TRANSCRIPT filed for dates of 8/3/98; Rptr: Heather Alford from Hawkins Reporting Services (lf) (Entered: 08/04/1998)
08/05/1998	292	ORDER, discovery is stayed for 60 days; oral argument on case dispositive motions scheduled for 10/15/98 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 08/06/1998)
08/05/1998	293	ORDER, by 8/4/98 pltf's to explain the facts at bar are distinguishable from those describe in the decision issues in Bard v. Guidant Corp.(signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 08/06/1998)
08/27/1998	294	MOTION by Boston Scientific, Scimed Life Systems for Summary Judgment of invalidity of US Patent no. 5,102,417 Answer Brief due 9/10/98 re: [294-1] motion (lf) (Entered: 08/31/1998)
08/27/1998	295	Opening Brief Filed by Boston Scientific, Scimed Life Systems [294-1] motion for Summary Judgment of invalidity of US Patent no. 5,102,417 - Answer Brief due 9/10/98 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	296	Declaration of Matthew Birdall (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	297	Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [295-1] opening brief; Vol 1 of 2 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	298	Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [295-1] opening brief; Vol 2 of 2 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	299	MOTION by Arterial Vascular for Summary Judgment of non-infringement on all patents in suit (lf) (Entered: 08/31/1998)
08/27/1998	300	Opening Brief Filed by Arterial Vascular [299-1] motion for Summary Judgment of non-infringement on all patents in suit - Answer Brief due 9/10/98 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	301	Exhibits 1-18 to Brief Filed by Arterial Vascular Appending [300-1] opening brief; Vol. 1 of 2 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	302	Exhibits 19-38 to Brief Filed by Arterial Vascular Appending [300-1] opening brief; Vol 2 of 2 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	303	MOTION by Cordis Corporation with Proposed Order for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc. (lf) (Entered: 08/31/1998)
08/27/1998	304	Opening Brief Filed by Cordis Corporation [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc. - Answer Brief due 9/10/98 (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	305	Declaration of Lee Bendel (SEALED) (lf) (Entered: 08/31/1998)
08/27/1998	306	MOTION by Advanced Cardio Sys, Guidant Corporation with Proposed Order for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent Answer Brief due 9/10/98 re: [306-1] motion (lf) (Entered: 08/31/1998)
08/27/1998	307	Opening Brief Filed by Advanced Cardio Sys, Guidant Corporation [306-1] motion for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent - Answer Brief due 9/10/98 (lf) (Entered: 08/31/1998)
08/27/1998	308	Declaration of Paul Y. Feng (lf) (Entered: 08/31/1998)
08/28/1998	309	MOTION by Advanced Cardio Sys for Summary Judgment of invalidity of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent (lf) Modified on 09/20/1999 (Entered: 08/31/1998)
08/28/1998	310	Opening Brief Filed by Advanced Cardio Sys, Guidant Corporation [309-1] motion for Summary Judgment of invalidity of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent - Answer Brief due 9/11/98 (lf) (Entered: 08/31/1998)
08/28/1998	311	Declaration of John Nagy (lf) (Entered: 08/31/1998)
08/28/1998	312	Letter dated 8/28/98 from Steven Balick, Esq. to Judge Robinson; Re: rqst that a trail date be set now that '762 reexamination came to an end (lf) (Entered: 09/03/1998)
09/04/1998	313	Supplemental MEMORANDUM by Cordis Corporation in opposition to Guidant Corps motion to dismiss for lack of personal jurisdiction (lf) (Entered: 09/09/1998)
09/08/1998	314	Letter dated 9/8/98 from Fredrick Cottrell, III, Esq. to Judge Robinson; Re: writting in response to the letter of 8/28/98 by pltf asking the court to reconsider the order of 8/4/98 (lf)

(Entered: 09/09/1998)

09/09/1998	315	Letter dated 9/9/98 from Patricia Rogowski, Esq. to Judge Robinson; Re: letter apprising court of AVE's position regarding pltf's 8/28/98 letter to the court (lf) (Entered: 09/14/1998)
09/11/1998	316	Letter dated 9/11/98 from Frederick Cottrell, III, Esq. to Judge Robinson; Re: Apprising court of Judge McKelvies decision in Bard v. Guidant Corp. (lf) (Entered: 09/14/1998)
09/11/1998	317	Letter dated 9/11/98 from Steven Balick, Esq. to Judge Robinson; Re: response to letter from AVE's cnsl to court dated 9/8/98 and 9/9/98 (lf) (Entered: 09/14/1998)
09/14/1998	--	Tele-conference held, Robinson, J., sitting; Rptr: B. Gaffigan (lf) (Entered: 10/05/1999)
09/16/1998	318	Steno Notes for 9/14/98; Rptr: B. Gaffigan (lf) (Entered: 09/17/1998)
09/17/1998	319	TRANSCRIPT filed for dates of 9/14/98; Rptr: B. gaffigan (lf) (Entered: 09/21/1998)
09/24/1998	320	Answer Brief Filed by Advanced Cardio Sys, Guidant Corporation [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc. - Reply Brief due 10/1/98 (SEALED) (lf) (Entered: 09/25/1998)
09/24/1998	321	Declaration of Paul Feng (lf) (Entered: 09/25/1998)
09/24/1998	322	Answer Brief Filed by Arterial Vascular [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc. - Reply Brief due 10/1/98 (SEALED) (lf) (Entered: 09/25/1998)
09/25/1998	323	Answer Brief Filed by Cordis Corporation [299-1] motion for Summary Judgment of non-infringement on all patents in suit - Reply Brief due 10/2/98 (SEALED) (lf) (Entered: 09/25/1998)
09/25/1998	324	Answer Brief Filed by Cordis Corporation [306-1] motion for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent - Reply Brief due 10/2/98 (SEALED) (lf) (Entered: 09/29/1998)
09/25/1998	325	AFFIDAVIT of Michael J. Timmons by Cordis Corporation Re: [323-1] answer brief (SEALED) (lf) (Entered: 09/29/1998)
09/25/1998	326	Declaration of Lee Bendel (SEALED) (lf) (Entered: 09/29/1998)
09/25/1998	327	Declaration of Lee Bendel (SEALED) (lf) (Entered: 09/29/1998)
09/25/1998	328	Declaration of Nigel P. Buller (lf) (Entered: 09/29/1998)
09/25/1998	329	Answer Brief Filed by Cordis Corporation [309-1] motion for Summary Judgment of invalidity of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent - Reply Brief due 10/2/98, [294-1] motion for Summary Judgment of invalidity of US Patent no. 5,102,417 - Reply Brief due 10/2/98 (lf) (Entered: 09/29/1998)
09/25/1998	330	Exhibits to Brief Filed by Cordis Corporation Appending [323-1] answer brief (SEALED) (lf) (Entered: 09/29/1998)
09/28/1998	331	STIPULATION with proposed order; Re: file response to pltf's supplemental memor. in opposition to Motion to dismiss (lf) (Entered: 09/30/1998)
09/30/1998	332	ORDER denying [211-1] motion to Dismiss (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 09/30/1998)
09/30/1998	342	ORDER, defts' moiton to sever and stay is denied (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 10/15/1998)
10/02/1998	333	Letter dated 10/2/98 from Frederick Cottrell, III, Esq. to Judge Robinson; Re: Guidant proposes to fiel a combined response to pltf's supplemental submission and to reargue the 9/30/98 within the time for reargument under our Local Rules (lf) (Entered: 10/07/1998)
10/08/1998	334	Letter dated 10/8/98 from Josy Ingersoll, Esq. to Judge Robinson; Re: bringing to court's attention certain information in connection with the pending summary judgment moitons recently filed by ACS; Guidant Corp; ABE and Cordis (lf) (Entered: 10/13/1998)
10/08/1998	335	Reply Brief Filed by Boston Scientific, Scimed Life Systems [294-1] motion for Summary Judgment of invalidity of US Patent no. 5,102,417 (SEALED) (lf) (Entered: 10/13/1998)
10/08/1998	336	Reply Brief Filed by Cordis Corporation [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc. (SEALED) (lf) (Entered: 10/13/1998)
10/08/1998	337	Reply Brief Filed by Advanced Cardio Sys, Guidant Corporation [309-1] motion for Summary Judgment of invalidity of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent (SEALED) (lf) (Entered: 10/13/1998)

10/08/1998	338	Reply Brief Filed by Advanced Cardio Sys, Guidant Corporation [306-1] motion for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent (SEALED) (lf) (Entered: 10/13/1998)
10/08/1998	339	Declaration of John S, Nagy (SEALED) (lf) (Entered: 10/13/1998)
10/08/1998	340	Reply Brief Filed by Arterial Vascular [299-1] motion for Summary Judgment of non-infringement on all patents in suit (SEALED) (lf) (Entered: 10/13/1998)
10/13/1998	341	Letter dated 10/13/98 from Steve Balick, Esq. to Judge Robinson; Re: pltf's proposed schedule for discovery and trial (lf) (Entered: 10/14/1998)
10/14/1998	343	Letter dated 10/14/98 from Josy Ingersoll, Esq. to Judge RObinson; Re: writting on behalf of Boston Scientific Corp and Scimed Life Systems, Inc. in connection with BSC's pending summary judgment motion based on the invalidity of Patent No. 5,102,417 (lf) (Entered: 10/15/1998)
10/14/1998	344	Letter dated 10/14/98 from Frederick Cottrell, Esq. to Judge Robinson; Re: defts position regarding scheduling order (lf) (Entered: 10/16/1998)
10/14/1998	345	MOTION by Guidant Corporation with Proposed Order for Reconsideration of [332-1] order Answer Brief due 10/28/98 re: [345-1] motion (lf) (Entered: 10/16/1998)
10/14/1998	346	AFFIDAVIT by Guidant Corporation Re: Guido Neels (lf) (Entered: 10/16/1998)
10/14/1998	347	AFFIDAVIT by Guidant Corporation Re: Ronald Nicholas Spaulding (lf) (Entered: 10/16/1998)
10/14/1998	348	Opening Brief Filed by Guidant Corporation [345-1] motion for Reconsideration of [332-1] order - Answer Brief due 10/28/98 (SEALED) (lf) (Entered: 10/16/1998)
10/15/1998	--	Motion hearing re: [309-1] motion for Summary Judgment of invalidity of claims 1-3.9.11-14,17,22,25 and 29 of the '417 patent, [306-1] motion for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent, [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc., [299-1] motion for Summary Judgment of non-infringement on all patents in suit, [294-1] motion for Summary Judgment of invalidity of US Patent no. 5,102,417; Robinson, J., sitting; RPTR: V. Gunning (lf) (Entered: 10/15/1998)
10/15/1998	349	TRANSCRIPT filed [0-0] motion hearing for dates of 10/15/98; Rptr: V. Gunning/L. Dibbs (lf) (Entered: 10/16/1998)
10/15/1998	--	Motion hearing, J., sitting; Rptr: V. Gunnin/L. Dibbs (dispositive motions) (lf) (Entered: 10/05/1999)
10/26/1998	350	CERTIFICATE OF SERVICE by Cordis Corporation; Pltf 2nd rqst to Advanced Systems, Inc. and Guidant Corp for documents and things (lf) (Entered: 10/27/1998)
10/26/1998	351	CERTIFICATE OF SERVICE by Cordis Corporation; Re: pltf's 2nd rqst for documents and things (lf) (Entered: 10/27/1998)
10/26/1998	352	CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's 2nd rqst to Boston Scientific Corp. and Scimed Life Systems. Inc. for documents and things (lf) (Entered: 10/27/1998)
10/27/1998	353	CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: 1st rqst for production of documents directed to Cordis; 1st rqst for production of documents directed to expandable Grafts partnership; 1st rqst fo production of documents directed to Johnson & Johnson; 1st rqst for production of documents directed to Ethicon (lf) Modified on 10/29/1998 (Entered: 10/29/1998)
10/27/1998	354	CERTIFICATE OF SERVICE by Arterial Vascular; RE; Deft's 1st set of rqsts for production of documents and things to Deft Boston Scientific Corp. (nos. 1-10) (lf) (Entered: 10/29/1998)
10/27/1998	355	CERTIFICATE OF SERVICE by Arterial Vascular; Re: Deft Arterial Vascular Engineering Inc 1st set of rqsts for production of documents and things to deft Johnson and Johnson (lf) (Entered: 10/29/1998)
10/27/1998	356	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 3rd set of rqsts for production of documents and things to pltf (Nos. 81-121) (lf) (Entered: 10/29/1998)
10/27/1998	357	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 2nd set of rqst for production of documents and things to Deft Advanced Cardiovascular Systems, Inc. (nos. 5-11) (lf) (Entered: 10/29/1998)
10/27/1998	358	CERTIFICATE OF SERVICE by Arterial Vascular; Re: 2nd set of rqsts for production of documents and things to pltf Expandable Grafts Partnership (nos. 70-108) (lf) (Entered: 10/29/1998)
10/29/1998	359	STIPULATION with proposed order for pltf to file memo in opposition to Guidant Motion for reargument of the court's 9/30/98 (lf) (Entered: 11/03/1998)

10/30/1998 360 CERTIFICATE OF SERVICE by Advanced Cardio Sys; 1st set of rqsts for production of documents and things (nos. 1-57) and 2nd set of rqsts for production of documents and things (lf) (Entered: 11/03/1998)

11/03/1998 361 Letter dated 11/3/98 from Frederick Cottrell,III, Esq. to Judge Robinson; Re: bringing to court's attention recent decision in Federal Circuit decision in Phillips Petroleum v. Huntsman Paloymers Corp. (lf) (Entered: 11/05/1998)

11/04/1998 -- So Ordered granting [359-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 11/05/1998)

11/05/1998 362 Answer Brief Filed by Cordis Corporation [345-1] motion for Reconsideration of [332-1] order - Reply Brief due 11/12/98 (SEALED) (lf) (Entered: 11/06/1998)

11/18/1998 363 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; re: 2nd rqst for production of documents (nos.134-168); 2nd rqst for production to EGP (nos. 134-168); 2nd rqst for production to JJIS (nos. 134-168) and 2nd rqst for production to Ethicpn (nos. 134-168) (lf) (Entered: 11/19/1998)

11/18/1998 364 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems: 1st rqst for production directed to ACS (Nos. 1-26) and 1st rqst for production of documents directed to AVE (nos. 1-26) (lf) (Entered: 11/19/1998)

11/25/1998 365 CERTIFICATE OF SERVICE; Re: Objections and responses of Ethicon, Inc. to Boston Scientific and Scimed Life System's 1st rqst for production of document (lf) (Entered: 12/01/1998)

11/25/1998 366 CERTIFICATE OF SERVICE of Johnson and Johnson Interventional Systems to Boston Scientific and Scimed Life System's 1st rqst for production of documents (lf) (Entered: 12/01/1998)

11/25/1998 367 CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: Objections and responses to Cordis Corp's 2nd rqst for production of documents (lf) (Entered: 12/01/1998)

11/25/1998 368 CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: responses to 2nd set of rqsts for production of documents and things (nos. 5-11) (lf) (Entered: 12/01/1998)

11/25/1998 369 CERTIFICATE OF SERVICE of Johnson & Johnson to Deft Arterial Vascular Engineering 1st set of rqsts for production of document and things (nos. 1-61) (lf) (Entered: 12/01/1998)

11/25/1998 370 CERTIFICATE OF SERVICE of Cordis Corp to deft Arterial Vascular 3rd set of rqst for production of documents and things (nos. 81-122) (lf) (Entered: 12/01/1998)

11/25/1998 371 CERTIFICATE OF SERVICE of Cordis Corp to Boston Scientific and Scimed Life System's 1st rqst for production of documents (lf) (Entered: 12/01/1998)

11/30/1998 372 CERTIFICATE OF SERVICE by Arterial Vascular objections and responses to pltf's 2nd rqst for production nos. 1-31 (lf) (Entered: 12/01/1998)

11/30/1998 373 NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Expandable Grafts Partnership on 12/10/98 (lf) (Entered: 12/03/1998)

11/30/1998 374 NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Cordis Corp. on 12/9/98 (lf) (Entered: 12/03/1998)

12/01/1998 375 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Objections and responses of pltf to Advanced Cardiovascular Systems, Inc 2nd set of rqsts for production of documents and things to Cordis (nos. 67-133) (lf) (Entered: 12/03/1998)

12/02/1998 376 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: responses to Arterial Vascular Engineering's 1st rqst for documents and things and responses to pltf's 2nd rqst for documents and things (lf) (Entered: 12/03/1998)

12/03/1998 377 NOTICE by Arterial Vascular to take deposition of Cordis Corp. on 12/9/98 at 10:00am (lf) (Entered: 12/04/1998)

12/03/1998 378 NOTICE by Arterial Vascular to take deposition of Expandable Grafts Partnership on 12/9/98 (lf) (Entered: 12/04/1998)

12/03/1998 379 NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Expandable Grafts Partnership on 12/10/98 (lf) (Entered: 12/04/1998)

12/03/1998 380 NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Cordis Corp. on 12/9/98 (lf) (Entered: 12/04/1998)

12/03/1998 381 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Paul Bondor, Esq. to Appear Pro Hac Vice (lf) (Entered: 12/04/1998)

12/03/1998 382 AMENDED NOTICE by Arterial Vascular to take deposition of Expandable Grafts Partnership on 12/10/98 (lf) (Entered: 12/04/1998)

12/07/1998 -- So Ordered granting [381-1] motion for Paul Bondor, Esq. to Appear Pro Hac Vice (signed by

Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 12/07/1998)

12/09/1998 383 NOTICE by Cordis Corporation to take deposition of Arterial Vascular Engineering, on 12/30/98 (lf) (Entered: 12/11/1998)

12/09/1998 384 NOTICE by Cordis Corporation to take deposition of Advanced Cardiovascular Systems, Inc and Guidant Corp on 12/21/98 (lf) (Entered: 12/11/1998)

12/09/1998 385 NOTICE by Cordis Corporation to take deposition of Boston Scientific Corp. Scimed Life Systems, Inc. on 12/22/98 (lf) (Entered: 12/11/1998)

12/11/1998 386 Letter dated 12/11/98 from court to cnsl; Re: Rescheduling argument currently set for 12/18/98 (lf) (Entered: 12/15/1998)

12/16/1998 387 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Winston Henderson, Esq. to Appear Pro Hac Vice (lf) (Entered: 12/21/1998)

12/21/1998 -- So Ordered granting [387-1] motion for Winston Henderson, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 12/28/1998)

01/04/1999 388 CERTIFICATE OF SERVICE by Cordis Corporation and Expandable Grafts Partnership to Boston Scientific and Scimed Life Systems' 2nd rqst for production of Documents (lf) (Entered: 01/11/1999)

01/04/1999 389 CERTIFICATE OF SERVICE by Cordis Corporation to Boston Scientific and Scimed Life Systems' 2nd rqst for production of documents (lf) (Entered: 01/11/1999)

01/06/1999 390 CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: Objections and responses to Boston Scientific and Scimed Life Systems' 1st rqst for production of documents (nos. 1-26) (lf) (Entered: 01/11/1999)

01/08/1999 391 Letter dated 1/8/99 from Steven Balick, Esq. to Judge Robinson; Re: writing to court to bring to its attention information that bears directly on the course of these related cases (lf) (Entered: 01/11/1999)

01/13/1999 392 ORDER, general status cnf. scheduled for 1/28/99 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 01/14/1999)

01/15/1999 393 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 01/19/1999)

01/15/1999 394 Letter dated 1/15/99 from Patricia Rogowski, Esq. to Judge Robinson; Re: response to 1/8/99 letter from Cordis to Court (lf) (Entered: 01/19/1999)

01/19/1999 395 CERTIFICATE OF SERVICE by Arterial Vascular; Re: 2nd set of interogs to pltf Cordis Corp (No. 18) (lf) (Entered: 01/25/1999)

01/26/1999 396 MOTION by Arterial Vascular for Reconsideration of [393-1] order (SEALED) (lf) Modified on 01/29/1999 (Entered: 01/29/1999)

01/27/1999 397 Letter dated 1/27/99 from Steven Balick, Esq. to Judge Robinson; Re: agenda for 1/28/99 conf. (lf) (Entered: 01/29/1999)

01/27/1999 398 Letter dated 1/27/99 from Fredrick Cottrell, Esq. to Judge Robinson; Re: response to Cordis' letter to the court of 1/8/99 (lf) (Entered: 01/29/1999)

01/27/1999 399 Letter dated 1/27/99 from Frederick Cottrell, Esq. to Judge Robinson; Re: agenda regarding status cnf. (lf) (Entered: 01/29/1999)

01/28/1999 -- Status conference held, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 01/29/1999)

01/28/1999 400 TRANSCRIPT filed [0-0] status conference for dates of 1/28/99; Rptr: V. Gunning (lf) (Entered: 01/29/1999)

01/29/1999 401 ORDER, protective order's Outside counsel eyes only category is limited to pending patent applications; see order for details (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 01/29/1999)

02/01/1999 402 MOTION by Cordis Corporation, Expandable Grafts for Reconsideration of [393-1] order (lf) (Entered: 02/03/1999)

02/01/1999 403 Opening Brief Filed by Cordis Corporation, Expandable Grafts [402-1] motion for Reconsideration of [393-1] order - Answer Brief due 2/16/99 (lf) (Entered: 02/03/1999)

02/03/1999 404 STIPULATION with proposed order for defts to move for reargument of the court's 1/15/99 Markman order and opinion by 2/5/99 (lf) (Entered: 02/04/1999)

02/05/1999 405 MEMORANDUM by Advanced Cardio Sys, Guidant Corporation in support of [402-1] motion for Reconsideration of [393-1] order (SEALED) (lf) (Entered: 02/09/1999)

02/05/1999	406	Letter dated 2/5/99 from Patricia S. Rogowski, Esq. to Judge Robinson; re: response to court's rqst on the view regarding how the court should dispose of the pending summary judgment motions (lf) (Entered: 02/09/1999)
02/05/1999	407	Letter dated 2/5/99 from Josy Ingersoll, Esq. to Judge Robinson; Re: response to court's rqst on having parties submit comments on claim construction rulings (lf) (Entered: 02/09/1999)
02/05/1999	408	Letter dated 2/5/99 from Steven Balick, Esq. to Judge Robinson; Re: response to courts rqst regarding how the court should dispose of summary judgment motions (lf) (Entered: 02/09/1999)
02/05/1999	409	MOTION by Advanced Cardio Sys, Guidant Corporation for Reconsideration of [393-1] order Answer Brief due 2/19/99 re: [409-1] motion (lf) (Entered: 02/09/1999)
02/05/1999	410	AMENDED NOTICE by Cordis Corporation to take deposition of Boston Scientific and Scimed Life on 2/11/99 (lf) (Entered: 02/09/1999)
02/09/1999	411	Answer Brief Filed by Cordis Corporation, Expandable Grafts [396-1] motion for Reconsideration of [393-1] order - Reply Brief due 2/16/99 (SEALED) (lf) (Entered: 02/11/1999)
02/09/1999	--	So Ordered granting [404-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 02/17/1999)
02/10/1999	412	Letter dated 2/10/99 from Josy Ingersoll Esq to Judge Robinson; Re: omission of pages 50 and 51 of Boston Scientific brief in support of the motion for summary judgment (lf) (Entered: 02/11/1999)
02/16/1999	413	CERTIFICATE OF SERVICE by Cordis Corporation; Pltf's objections and responses to deft Arterial Vascular Engineering's 2nd set of interros to pltf (No. 18) (lf) (Entered: 02/17/1999)
02/16/1999	414	Answer Brief Filed by Advanced Cardio Sys, Guidant Corporation [402-1] motion for Reconsideration of [393-1] order - Reply Brief due 2/23/99 (SEALED) (lf) (Entered: 02/17/1999)
02/17/1999	415	MOTION by Arterial Vascular with Proposed Order for Leave to File reply brief in support of AVE's motion for reconsideration (lf) (Entered: 02/24/1999)
02/22/1999	416	Answer Brief Filed by Cordis Corporation, Expandable Grafts [409-1] motion for Reconsideration of [393-1] order - Reply Brief due 3/1/99 (SEALED) (lf) (Entered: 02/25/1999)
03/03/1999	417	NOTICE of change of party-deft Arterial Vascular Engineering, Inc. to medtronic Ave, Inc. (lf) (Entered: 03/05/1999)
03/03/1999	--	So Ordered granting [415-1] motion for Leave to File reply brief in support of AVE's motion for reconsideration (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/05/1999)
03/03/1999	418	Reply Brief Filed by Arterial Vasculars motion for reconsideration and reargument of the court's 1/15/99 memorandum opinion (SEALED) (lf) Modified on 03/21/2000 (Entered: 03/05/1999)
03/04/1999	419	NOTICE by Cordis Corporation to take deposition of Boston Scientific Corp and Scimed Life Systems, Inc (lf) (Entered: 03/05/1999)
03/04/1999	420	NOTICE by Cordis Corporation to take deposition of Arterial Vascular Engineering (lf) (Entered: 03/05/1999)
03/04/1999	421	NOTICE by Cordis Corporation to take deposition of Advanced Cardiovascular Systems, Inc. and Guidant Corp. (lf) (Entered: 03/05/1999)
03/24/1999	422	Letter dated 3/24/99 from Steven Margolin, Esq. to Judge Robinson; Re: filing proposed scheduling order (lf) (Entered: 03/29/1999)
03/24/1999	423	Proposed Scheduling Order filed (lf) (Entered: 03/29/1999)
03/25/1999	424	Letter dated 3/25/99 from Steven Margolin, Esq. to Judge Robinson; Re: agenda for scheduled telecnf. on 3/26/99 (lf) (Entered: 03/29/1999)
03/25/1999	425	Letter dated 3/25/99 from Frederick Cottrell, Jr., Esq. to Judge Robinson; Re: agenda for 3/26/99 telecnf. (lf) (Entered: 03/29/1999)
03/26/1999	--	Tele-conference held, Robinson, J., sitting; Rptr: B. Gaffigan (lf) (Entered: 03/29/1999)
03/30/1999	426	Steno Notes for 3/26/99; Rptr: B. Gaffigan (lf) (Entered: 03/31/1999)
03/30/1999	427	TRANSCRIPT filed [0-0] telephone conference for dates of 3/26/99; Rptr: B. Gaffigan (lf) (Entered: 03/31/1999)
04/01/1999	428	MOTION by Cordis Corporation with Proposed Order for Leave to File 3rd Amended and supplemental complaint (lf) (Entered: 04/06/1999)

04/01/1999 429 Opening Brief Filed by Cordis Corporation [428-1] motion for Leave to File 3rd Amended and supplemental complaint - Answer Brief due 4/15/99 (SEALED) (lf) (Entered: 04/06/1999)

04/06/1999 430 Letter dated 4/6/99 from Steven Balick, Esq. to Judge Robinson; Re: concern is that in order for the parties to determine which claim terms have disputed meanings, and in order for them to narrow that list to the maximum extent possible prior to submitting opening markman briefs (lf) (Entered: 04/08/1999)

04/15/1999 431 Answer Brief Filed by Advanced Cardio Sys [428-1] motion for Leave to File 3rd Amended and supplemental complaint - Reply Brief due 4/22/99 (SEALED) (lf) (Entered: 04/16/1999)

04/15/1999 432 Answer Brief Filed by Medtronic AVE, Inc. to Cordis's [428-1] motion for Leave to File 3rd Amended and supplemental complaint - Reply Brief due 4/22/99 (lf) (Entered: 04/16/1999)

04/15/1999 433 Answer Brief Filed by Boston Scientific, Scimed Life Systems [428-1] motion for Leave to File 3rd Amended and supplemental complaint - Reply Brief due 4/22/99 (lf) (Entered: 04/16/1999)

04/22/1999 434 Reply Brief Filed by Cordis Corporation [428-1] motion for Leave to File 3rd Amended and supplemental complaint (lf) (Entered: 04/26/1999)

04/27/1999 435 Letter dated 4/27/99 from Frederick Cottrell, Jr., Esq. to Judge Robinson; Re: deft's rqst oral argument (lf) (Entered: 04/29/1999)

04/28/1999 -- Tele-conference held, Robinson, J., sitting; Rptr: K. Maurer (lf) (Entered: 05/07/1999)

04/30/1999 436 CERTIFICATE OF SERVICE by Medtronic AVE, Inc; Re: Notice of deposition of Colin Chan (lf) (Entered: 05/03/1999)

05/05/1999 437 CERTIFICATE OF SERVICE filed by Medtronic; re: Notice of deposition of Sean Salmon (lf) (Entered: 05/07/1999)

05/06/1999 438 TRANSCRIPT filed [0-0] telephone conference for dates of 4/28/99; Rptr: K. Maurer (lf) (Entered: 05/07/1999)

05/07/1999 439 Letter dated 5/7/99 from Steven Balick, Esq. to Judge Robinson; Re: advising court of three matters (lf) (Entered: 05/10/1999)

05/07/1999 440 Proposed Scheduling Order filed by Cordis Corporation, Advanced Cardio Sys, Guidant Corporation, Arterial Vascular, Boston Scientific, Scimed Life Systems (lf) (Entered: 05/10/1999)

05/07/1999 441 Letter (copy) dated 4/30/99 from Josy Ingersoll, Esq. to Steve Balick, Esq. Re: makes no sense to enter any schedule now, before the court has ruled upon Corids' motion to amend (lf) (Entered: 05/10/1999)

05/07/1999 442 CERTIFICATE OF SERVICE filed by Medtronic AVE, Inc Re: Notice of deposition of Steve Schiess (lf) (Entered: 05/10/1999)

05/13/1999 443 Letter dated 5/13/99 from Josy Ingersoll, Esq. to Judge Robinson; Re: response to Mr. Balick's letter of 5/7/99 (lf) (Entered: 05/14/1999)

05/13/1999 444 Steno Notes for 4/28/99; Rptr: K. Maurer (lf) (Entered: 05/14/1999)

05/13/1999 445 ORDER granting [428-1] motion for Leave to File 3rd Amended and supplemental complaint (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 05/14/1999)

05/24/1999 446 CERTIFICATE OF SERVICE by Medtronic, Inc.; Re: Notice of deposition of Johnson&Johnson (lf) (Entered: 05/25/1999)

05/24/1999 447 CERTIFICATE OF SERVICE by Medtronic, Inc.; Re: Notice of deposition of Expandable Grafts Partnerships (lf) (Entered: 05/25/1999)

05/24/1999 448 CERTIFICATE OF SERVICE by Medtronic, Inc.; Re: Notice of deposition of Paul Marshall (lf) (Entered: 05/25/1999)

06/01/1999 449 3rd AMENDED COMPLAINT and demand for jury trial by Cordis Corporation , (Answer due 6/11/99 for Scimed Life Systems, for Boston Scientific, for Arterial Vascular, for Guidant Corporation, for Advanced Cardio Sys) amending [200-1] amended complaint (lf) (Entered: 06/02/1999)

06/03/1999 450 CERTIFICATE OF SERVICE filed by Medtronic; Re: Notice of deposition of Samuel Liang (lf) (Entered: 06/08/1999)

06/03/1999 451 NOTICE by Cordis Corporation to take deposition of Andrew Rasdal on 6/10/99 (lf) (Entered: 06/08/1999)

06/08/1999 452 CERTIFICATE OF SERVICE; Re: Objections and responses of Johnson & Johnson to deft Medtronic AVE, Incs notice of deposition (lf) (Entered: 06/10/1999)

06/10/1999 453 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's 2nd set of interrogs to Medtronic AVE, Inc. (lf) (Entered: 06/15/1999)

06/10/1999 454 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Pltf's 2nd set of interrogs to Boston Scientific Corp and Scimed Life Systems, Inc. (lf) (Entered: 06/15/1999)

06/10/1999 455 CERTIFICATE OF SERVICE by Cordis Corporation; Pltf's 2nd set of interrogs to Advanced Cardiovascular Systems, Inc. and Guidant Corp. (lf) (Entered: 06/15/1999)

06/15/1999 456 ANSWER to amended complaint and COUNTERCLAIM by Boston Scientific, Scimed Life Systems (Attorney); jury demand against Cordis Corporation (lf) (Entered: 06/17/1999)

06/16/1999 457 ANSWER to amended complaint and COUNTERCLAIM by Medtronic AVE, Inc. (Attorney Patricia Smink Rogowski) against Cordis Corporation (lf) (Entered: 06/17/1999)

06/16/1999 458 ANSWER to amended complaint and COUNTERCLAIM by Advanced Cardio Sys (Attorney) against Cordis Corporation (lf) (Entered: 06/17/1999)

06/16/1999 459 ANSWER to Complaint by Guidant Corporation (Attorney), (lf) (Entered: 06/17/1999)

06/16/1999 460 CERTIFICATE OF SERVICE by Expandable Grafts objections and responses to notice of deposition (lf) (Entered: 06/21/1999)

06/16/1999 461 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Notice of deposition of Luke Harada (lf) (Entered: 06/21/1999)

06/18/1999 462 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 06/21/1999)

06/18/1999 463 ORDER granting in part, denying in part [306-1] motion for Summary Judgment of non-infringement of claims 1-3,9,11-14,17,22,25 and 29 of the '417 patent, denying [303-1] motion for Summary Judgment of infringement of the '417 patent by deft Advanced Cardiovascular Systems, Inc., granting in part, denying in part [299-1] motion for Summary Judgment of non-infringement on all patents in suit (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 06/21/1999)

06/18/1999 464 ORDER granting [409-1] motion for Reconsideration of [393-1] order, granting [402-1] motion for Reconsideration of [393-1] order, granting [396-1] motion for Reconsideration of [393-1] order (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 06/21/1999)

06/21/1999 465 Letter dated 6/21/99 from Patricia Rogowski, Esq. to Judge Robinson; Re: filing agenda for cnf. on 6/21/99 (lf) (Entered: 06/23/1999)

06/21/1999 -- Status conference held, Robinson, J., sitting; Rptr: V) Gunning (lf) (Entered: 06/23/1999)

06/21/1999 466 Letter dated 6/21/99 from Steven Balick, Esq. to Judge Robinson; Re: Agenda for 6/22/99 status hearing (lf) (Entered: 06/23/1999)

06/21/1999 467 Letter dated 6/21/99 from Patricia S. Rogowski, Esq. to Judge Robinson; Re: agenda for status cnf. and proposed order (lf) (Entered: 06/23/1999)

06/22/1999 468 TRANSCRIPT filed [0-0] status conference for dates of 6/21/99: Rptr: V. Gunning (lf) (Entered: 06/23/1999)

06/22/1999 469 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for George Badenoch, Esq. to Appear Pro Hac Vice (lf) (Entered: 06/23/1999)

06/22/1999 -- Tele-conference held, Robinson, J., sitting; Rptr: V., Gunning (lf) (Entered: 10/05/1999)

06/24/1999 -- So Ordered granting [469-1] motion for George Badenoch, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/29/1999)

06/24/1999 470 NOTICE by Cordis Corporation to take deposition of Advanced Cardiovascular Systems, Inc and Guidant Corp on 8/4/99 (lf) (Entered: 06/29/1999)

06/24/1999 471 NOTICE by Cordis Corporation to take deposition of Tom Douthitt on 8/4/99 (lf) (Entered: 06/29/1999)

06/25/1999 472 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. - Serving Notice of Deposition of Carla Isicoff (lf) (Entered: 06/29/1999)

06/28/1999 473 Letter dated 6/28/99 from Francis DiGiovanni to court; Re: filing amended answer and courtclaims of defts Medtronic (lf) (Entered: 06/29/1999)

06/28/1999 474 AMENDED ANSWER and counterclaims of deft Medtronic AVE, Inc. to 3rd amended complaint of pltf Cordis Corp. (lf) (Entered: 06/29/1999)

06/28/1999 475 CERTIFICATE OF SERVICE by Cordis Corporation; Notice of subpoena (lf) (Entered: 06/29/1999)

06/29/1999	476	CERTIFICATE OF SERVICE by Cordis Corporation; 3rd rqst to Advanced Cardiovascular Systems and Guidant Corp. for documents and things (lf) (Entered: 07/01/1999)
06/29/1999	477	CERTIFICATE OF SERVICE by Cordis Corporation; Re: pltf's 3rd rqst to Medtronic AVE Inc. for production of documents and things (lf) (Entered: 07/01/1999)
06/29/1999	478	CERTIFICATE OF SERVICE by Cordis Corporation; 3rd rqst to Boston Scientific and Scimed Life Systems, Inc. for documents and things (lf) (Entered: 07/01/1999)
06/30/1999	479	MOTION by Medtronic AVE, Inc. with Proposed Order for Jan M. Conlin, Esq. to Appear Pro Hac Vice (lf) (Entered: 07/01/1999)
06/30/1999	480	MOTION by Medtronic AVE, Inc. with Proposed Order for A. James Anderson Esq. to Appear Pro Hac Vice (lf) (Entered: 07/01/1999)
06/30/1999	481	MOTION by Medtronic AVE, Inc. with Proposed Order for Michael Ciresi, Esq. to Appear Pro Hac Vice (lf) (Entered: 07/01/1999)
06/30/1999	482	MOTION by Medtronic AVE, Inc. with Proposed Order for Tara Sutton, Esq. to Appear Pro Hac Vice (lf) (Entered: 07/01/1999)
07/02/1999	483	Letter dated 7/2/99 from Steven Balick, Esq. to Judge Robinson; Re: filing motion and opening brief on behalf of Cordis Corp. seeking argument of certain portions of court's memo. opinion, order and memorandum order issued on 6/18/99 (lf) (Entered: 07/06/1999)
07/02/1999	484	MOTION by Cordis Corporation for Reconsideration of [464-1] order, [463-1] order, [462-1] order Answer Brief due 7/16/99 re: [484-1] motion (lf) (Entered: 07/06/1999)
07/02/1999	485	Opening Brief Filed by Cordis Corporation [484-1] motion for Reconsideration of [464-1] order, [463-1] order, [462-1] order - Answer Brief due 7/16/99 (lf) (Entered: 07/06/1999)
07/02/1999	486	Declaration of John Collins (lf) (Entered: 07/06/1999)
07/02/1999	487	Declaration of Lee Bendel (lf) (Entered: 07/06/1999)
07/06/1999	488	CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Notice of deposition of Terri Boyd (lf) (Entered: 07/09/1999)
07/06/1999	489	ANSWER by Cordis Corporation to [458-2] counter claim (lf) (Entered: 07/09/1999)
07/06/1999	490	ANSWER by Cordis Corporation to [456-2] counter claim (lf) (Entered: 07/09/1999)
07/08/1999	491	STIPULATION with proposed order for Cordis to reply to counterclaims of Medtronic by 7/28/99 (lf) (Entered: 07/09/1999)
07/08/1999	492	CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: Objections and responses to Cordis Corp. 2nd set of interrogs (lf) (Entered: 07/13/1999)
07/09/1999	493	STIPULATION with proposed order for Expandable Grafts Partnership must reply to the courterclaims of deft Advanced Cardiovascular Systems, Inc. by 7/9/99 (lf) (Entered: 07/13/1999)
07/09/1999	494	STIPULATION with proposed order for Expandable Grafts Partnerships must reply to counterclaim of Boston Scientific and Scimed Life System's by 7/9/99 (lf) (Entered: 07/13/1999)
07/09/1999	495	ANSWER by Expandable Grafts to [458-2] counter claim (lf) (Entered: 07/13/1999)
07/09/1999	496	ANSWER by Expandable Grafts to [456-2] counter claim (lf) (Entered: 07/13/1999)
07/09/1999	497	CERTIFICATE OF SERVICE by Advanced Cardio Sys; objections and responses to pltf's 2nd set of interrogs (lf) (Entered: 07/13/1999)
07/12/1999	--	So Ordered granting [482-1] motion for Tara Sutton, Esq. to Appear Pro Hac Vice, granting [481-1] motion for Michael Ciresi, Esq. to Appear Pro Hac Vice, granting [480-1] motion for A. James Anderson Esq. to Appear Pro Hac Vice, granting [479-1] motion for Jan M. Conlin, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/13/1999)
07/12/1999	--	So Ordered granting [491-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/13/1999)
07/12/1999	498	MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Bradley Meier, Esq. to Appear Pro Hac Vice (lf) (Entered: 07/13/1999)
07/12/1999	499	STIPULATION with proposed order for Expandable Grafts Partnership to respond to counterclaims of Medtronic AVE by 7/28/99 (lf) (Entered: 07/13/1999)
07/13/1999	500	CERTIFICATE OF SERVICE filed by Johnson&Johnson's objection and responses to Medtronic AVE 1st set of interrogs (nos. 1-12) (lf) (Entered: 07/14/1999)

07/14/1999 -- So Ordered granting [498-1] motion for Bradley Meier, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/14/1999)

07/14/1999 -- So Ordered granting [499-1] stipulation, granting [494-1] stipulation, granting [493-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/14/1999)

07/15/1999 501 STIPULATION and proposed order for answer to motion for reargument to be filed on 7/26/99 (lf) (Entered: 07/16/1999)

07/16/1999 -- So Ordered granting [501-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/19/1999)

07/19/1999 502 STIPULATION with proposed order for defts to serve response to pltf's motion for reargument by 7/26/99 (lf) (Entered: 07/21/1999)

07/21/1999 -- So Ordered granting [502-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/23/1999)

07/26/1999 503 Letter dated 7/26/99 from Frederick Cottrell, Jr., Esq. to Judge Robinson; Re: notifying court that Advanced Cardiovascular and Guidant are in agreement with the proposal set forth in letter from Ms. Ingersoll (lf) (Entered: 07/27/1999)

07/26/1999 504 Letter dated 7/26/99 from Josy Ingersoll, Esq. to Judge Robinson; Re; response to Mr. Balick's letter of 7/2/99 (lf) (Entered: 07/27/1999)

07/26/1999 505 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Re: Deft's objections and responses to pltf's 2nd set of interrogos (lf) (Entered: 07/27/1999)

07/28/1999 506 STIPULATION with proposed order for Cordis to respond to counterclaims of deft Medtronic AVE, Inc. by 8/2/99 (lf) (Entered: 07/29/1999)

07/28/1999 507 STIPULATION with proposed order for Expandable Grafts Partnership to reply to counterclaims of Medtronic by 8/2/99 (lf) (Entered: 07/29/1999)

07/29/1999 508 CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; Re: Objections and responses to pltf's 3rd rqst for production of documents and things (lf) (Entered: 07/30/1999)

07/30/1999 -- So Ordered granting [507-1] stipulation, granting [506-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 07/30/1999)

07/30/1999 509 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Objections and resposnes to pltf's 3rd rqst for production of documents and things (lf) (Entered: 08/02/1999)

08/02/1999 510 MOTION by Cordis Corporation, Johnson&Johnson and Expandable Grafts Partnership with Proposed Order to Dismiss count I of AVE's counterclaim with respect to the 665 patent for lack of subject matter jurisdiction (lf) (Entered: 08/03/1999)

08/02/1999 511 Opening Brief Filed by Cordis Corporation, et al (lf) (Entered: 08/03/1999)

08/03/1999 512 Reply Brief Filed by Cordis Corporation [484-1] motion for Reconsideration of [464-1] order, [463-1] order, [462-1] order (lf) (Entered: 08/06/1999)

08/10/1999 513 Letter to Judge Robinson from Steven Balick re related motions DI 39 in 97-700 & DI 510 in 97-550. (maw) (Entered: 08/16/1999)

08/10/1999 514 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems of response to Cordis's 3rd req. for production. (maw) (Entered: 08/16/1999)

08/12/1999 515 Letter to Judge Robinson from Patricia Rogowski in response to DI 513. (maw) (Entered: 08/16/1999)

08/16/1999 516 STIPULATION with proposed order, time for Medtronic to file answering brief re DI #510 extended to 9/7/99. (maw) (Entered: 08/20/1999)

08/23/1999 517 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; 2nd set of rqsts for production of documents and things to Johnson& Johnson (nos. 64-69) (lf) (Entered: 08/24/1999)

08/23/1999 518 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Re: 4th set of rqsts for production of documents and things to Cordis (nos. 122-128) (lf) (Entered: 08/24/1999)

08/26/1999 519 Proposed Protective Order filed by Cordis Corporation, Advanced Cardio Sys, Guidant Corporation, Arterial Vascular, Boston Scientific, Scimed Life Systems (lf) (Entered: 08/27/1999)

08/26/1999 -- So Ordered granting [516-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/27/1999)

08/26/1999 520 CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Re: 3rd set of rqsts for production of documents and things to Expandable Grafts Partnership (nos. 109-114) (lf) (Entered: 08/27/1999)

08/27/1999	521	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation; 2nd set of rqsts for production of documents and things to Expandable Grafts Partnership (nos. 58-80) (lf) (Entered: 08/31/1999)
08/27/1999	522	CERTIFICATE OF SERVICE by Advanced Cardio Sys; third set of rqsts for production of documents and things to Cordis Corp (nos. 134-156) (lf) (Entered: 08/31/1999)
08/27/1999	523	Letter dated 8/27/99 from Patricia Smink Rogowski, Esq. to Judge Robinson; Re: filing proposed scheduling order - defts rqst telecnf. to discuss issue before court signs (lf) (Entered: 08/31/1999)
08/27/1999	524	Proposed Scheduling Order filed (lf) (Entered: 08/31/1999)
08/27/1999	525	Letter dated 8/27/99 from Steven Balick to Judge Robinson; Re: parties have agreed upon scheduling order (attached) with one exception (lf) (Entered: 08/31/1999)
08/31/1999	--	So Ordered [519-1] proposed order (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/31/1999)
08/31/1999	526	NOTICE by Advanced Cardio Sys, Guidant Corporation to take deposition of Robert Croce on 9/8/99 (lf) (Entered: 09/07/1999)
09/07/1999	527	STIPULATION with proposed order to file answer to motion by Cordis with respect to lack of subject matter jurisdiction by 9/14/99 (lf) (Entered: 09/08/1999)
09/08/1999	528	CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Re: Notice of deposition of Patrick O'Neill (lf) (Entered: 09/09/1999)
09/08/1999	--	So Ordered granting [527-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 09/15/1999)
09/10/1999	529	Letter dated 9/10/99 from Patricia Rogowski, Esq. to Judge Robinson (SEALED) (lf) (Entered: 09/15/1999)
09/14/1999	530	Answer Brief Filed by Medtronic AVE, Inc. [510-1] motion to Dismiss count I of AVE's counterclaim with respect to the 665 patent for lack of subject matter jurisdiction - Reply Brief due 9/21/99 (SEALED) (lf) (Entered: 09/15/1999)
09/17/1999	531	ORDER granting [345-1] motion for Reconsideration of [332-1] order (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 09/20/1999)
09/17/1999	532	Letter dated 9/17/99 from Steven Balick, Esq. to Judge Robinson; Re: Cordis and Expandable Grafts response to defts' 9/10/99 letter (lf) (Entered: 09/20/1999)
09/17/1999	533	CERTIFICATE OF SERVICE; Re: Johnson& Johnson's objections and responses to Medtronic AVE, Inc's second set of rqsts for production of documents & Things to defts Johnson and Johnson (nos. 64-69) (lf) (Entered: 09/20/1999)
09/17/1999	534	CERTIFICATE OF SERVICE by Cordis Corporation; Re: objections & Responses to Medtronic Ave Inc 4th set of rqst for production of documents and things to pltf Cordis Corp. (nos. 122-128) (lf) (Entered: 09/20/1999)
09/24/1999	535	STIPULATION with proposed order; Re: pltf and counterdefendants to file reply to motion by 10/12/99 (lf) (Entered: 09/27/1999)
09/27/1999	--	So Ordered granting [535-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 09/29/1999)
09/27/1999	536	CERTIFICATE OF SERVICE by Cordis Corporation; Objections and responses of Cordis to Advanced Cardiovascular 2nd set of rqsts for production of documents and things to Cordis (nos. 67-133) (lf) (Entered: 09/29/1999)
09/27/1999	537	CERTIFICATE OF SERVICE by Expandable Grafts; Re: responses and objections to Advanced Cardiovascular 2nd set of rqsts for production (lf) (Entered: 09/29/1999)
09/27/1999	538	CERTIFICATE OF SERVICE by Expandable Grafts; Responses and objections to Medtronic amended 3rd set of rqst for production of documents and things (lf) (Entered: 09/29/1999)
09/30/1999	539	NOTICE by Advanced Cardio Sys, Arterial Vascular, Boston Scientific, Scimed Life Systems to take deposition of Radiological Society of North America on 10/6/99 (lf) (Entered: 10/05/1999)
10/07/1999	540	Letter dated 10/7/99 from Patricia Smink Rogowski, Esq. to Judge Robinson (SEALED) (lf) (Entered: 10/08/1999)
10/12/1999	541	Letter dated 10/12/99 from Patricia Smink Rogowski, Esq. to Judge Robinson; Re: rqst that court consider additional discovery dispute during telecnf. (lf) (Entered: 10/13/1999)
10/12/1999	542	Reply Brief Filed by Cordis Corporation, Expandable Grafts [510-1] motion to Dismiss count I of AVE's counterclaim with respect to the 665 patent for lack of subject matter jurisdiction (SEALED) (lf) (Entered: 10/13/1999)

10/13/1999 -- Tele-conference held, Robinson, J., sitting; Rptr: V. Gunning (lf) Modified on 10/13/1999 (Entered: 10/13/1999)

10/13/1999 543 NOTICE by Cordis Corporation to take deposition of Lilip Lau, William Hartigan, John Frantzen, Sharon Lam, Michael Orth, Nicole Walker, Rich Saunders, K.T. Rao and Mark Wholey (lf) (Entered: 10/15/1999)

10/15/1999 544 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Alan Pollack, Esq. to Appear Pro Hac Vice (lf) (Entered: 10/15/1999)

10/15/1999 545 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for George Winborne, Esq. to Appear Pro Hac Vice (lf) (Entered: 10/15/1999)

10/15/1999 546 ORDER, defts' rqsts for disclosure is granted in part and denied in part - see order for details (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 10/20/1999)

10/20/1999 -- So Ordered granting [545-1] motion for George Winborne, Esq. to Appear Pro Hac Vice, granting [544-1] motion for Alan Pollack, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 10/21/1999)

10/22/1999 547 NOTICE of SUBPOENA by Cordis Corporation (lf) (Entered: 10/22/1999)

10/22/1999 548 CERTIFICATE OF SERVICE by Advanced Cardio Sys; 3rd set of interrgs (nos. 13-35) (lf) (Entered: 10/25/1999)

10/28/1999 549 SCHEDULING ORDER setting Discovery cutoff 7/21/00 ; Deadline for filing dispositive motions 4/4/00 Pretrial conference for 3:00 10/12/00 ; Trial Date Deadline 9:00 11/1/00 ; Proposed Pretrial Order due on 10/6/00; conf. re structure of trial(s) sched. for 9/7/00 at 10:00; motions in limine due 9/28/00 with responses due 10/5/00; MATTER REF. TO MAGIS-JUDGE THYNGE FOR SETTLEMENT PURPOSES; SEE ORDER FOR FURTHER DETAILS. (signed by Judge Sue L. Robinson) copies to: MPT, cnsl. (bkb) Modified on 11/05/1999 (Entered: 11/05/1999)

10/28/1999 -- Deadline updated (see sched. order); set In Chambers Conference for 10:00 9/7/00 , set Motion Filing deadline to 9/28/00 (bkb) (Entered: 11/05/1999)

10/28/1999 550 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re service of their 1st set interrgs. to pltf. & other defts. (bkb) (Entered: 11/05/1999)

11/03/1999 551 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's 3rd set interrgs. to Advanced Cardiovascular Systems & Guidant Corp. (bkb) (Entered: 11/15/1999)

11/03/1999 552 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's 3rd set interrgs. to Medtronic (bkb) (Entered: 11/15/1999)

11/03/1999 553 CERTIFICATE OF SERVICE by Cordis Corporation re 3rd set interrgs. to Boston Scientific (bkb) (Entered: 11/15/1999)

11/03/1999 554 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re ntc. depo. of Philip Romano (bkb) (Entered: 11/15/1999)

11/08/1999 555 ORDER, set Telephone Conference for 9:00 11/22/99 (signed by Judge Mary P. Thyng) copies to: cnsl. (bkb) (Entered: 11/15/1999)

11/09/1999 556 Letter to Judge Robinson from Mr. Balick----SEALED (bkb) (Entered: 11/15/1999)

11/09/1999 557 CERTIFICATE OF SERVICE by Cordis Corporation re 4th rqst. to Boston Scientific & Schimed Life for prod. docs. & things (bkb) (Entered: 11/15/1999)

11/09/1999 558 CERTIFICATE OF SERVICE by Cordis Corporation re 4th rqst. prod. docs. & things to Medtronic (bkb) (Entered: 11/15/1999)

11/10/1999 -- Tele-conference held, Robinson, J., re discovery; rptr. K. Maurer. (bkb) (Entered: 11/15/1999)

11/12/1999 559 TRANSCRIPT filed [0-0] telephone conference for dates of 11/10/99 (bkb) (Entered: 11/30/1999)

11/15/1999 -- Deadline updated; set Telephone Conference for 9:00 11/22/99 (bkb) (Entered: 11/15/1999)

11/15/1999 560 Letter (11/15/99) to Judge Robinson from Steven J. Balick---SEALED (bkb) (Entered: 11/30/1999)

11/15/1999 561 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's 4th set interrgs. to Medtronic AVE (bkb) (Entered: 11/30/1999)

11/15/1999 562 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's 4th set interrgs. dir. to Advanced Cardiovascular Systems AND Guidant Corp. (bkb) (Entered: 11/30/1999)

11/15/1999 563 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's 4th set interrgs. dir. to Boston Scientific & Scimed Life Systems (bkb) (Entered: 11/30/1999)

11/15/1999	564	Letter (11/15/99) to Judge Robinson from Ms. Rogowski---SEALED (bkb) (Entered: 11/30/1999)
11/16/1999	565	CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re amended obj. & resp. to Cordis Corp.'s interrogs. & rqst. docs. (bkb) (Entered: 11/30/1999)
11/16/1999	566	CERTIFICATE OF SERVICE by Cordis Corporation re 2nd suppl. obj. & resp. to AVE's 1st set interrogs. (bkb) (Entered: 11/30/1999)
11/16/1999	567	CERTIFICATE OF SERVICE by Cordis Corporation re 1st suppl. obj. & resp. to Advanced Cardiovascular Systems' 1st set interrogs. (bkb) (Entered: 11/30/1999)
11/16/1999	573	Steno Notes for 11/10/99 by rprr. K. Maurer (bkb) (Entered: 11/30/1999)
11/18/1999	568	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re 1st amended obj. & suppl. resp. to pltf's 1st set interrogs. (bkb) (Entered: 11/30/1999)
11/18/1999	569	ORDER, sched. tele-conf.'s for 11/22/99; 11/23/99; & 11/29/99 (signed by Judge Mary P. Thyng) copies to: cnsl. (bkb) (Entered: 11/30/1999)
11/19/1999	--	Deadline updated; set Telephone Conference for 8:45 11/23/99 (bkb) (Entered: 11/19/1999)
11/19/1999	--	Deadline updated; set TELE-Conference for 9:00 11/22/99 (bkb) (Entered: 11/19/1999)
11/19/1999	570	NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Cordis Corporation on 12/1/99 at 9:30 a.m. (bkb) (Entered: 11/30/1999)
11/19/1999	571	NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Expandable Grafts Partnership on 11/29/99 at 10:00 a.m. (bkb) (Entered: 11/30/1999)
11/19/1999	572	NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Cordis Corp. on 11/29/99 at 10:00 a.m. (bkb) (Entered: 11/30/1999)
11/22/1999	--	Deadline updated; set Telephone Conference for 4:30 11/29/99 ; before Magistrate-Judge Thyng (bkb) (Entered: 11/22/1999)
11/22/1999	574	CERTIFICATE OF SERVICE of answers to Boston's & Scimed's 1st interrogs. filed by Expandable Grafts (maw) (Entered: 12/02/1999)
11/22/1999	575	CERTIFICATE OF SERVICE of subpoenas to RMS, Noble & Cook filed by Medtronic AVE, Inc. (maw) (Entered: 12/02/1999)
11/22/1999	576	CERTIFICATE OF SERVICE of Notice of Deposition of Johnson & Johnson & Cordis filed by Medtronic AVE, Inc. (maw) (Entered: 12/02/1999)
11/22/1999	577	CERTIFICATE OF SERVICE of 1st set of interrogs 1-21 & 2nd set of requests for production filed by Medtronic AVE, Inc. (maw) (Entered: 12/02/1999)
11/22/1999	578	CERTIFICATE OF SERVICE of 2nd set of interrogsfo Cordis & Expandable filed by Boston Scientific, Scimed Life Systems (maw) (Entered: 12/02/1999)
11/23/1999	579	ORDER, set Telephone Conference for 8:30 3/13/00 (signed by Judge Mary P. Thyng) copies to: cnsl. (maw) (Entered: 12/02/1999)
11/23/1999	580	ORDER, set Status Conference for 9:00 3/8/00 (signed by Judge Mary P. Thyng) copies to: cnsl. (maw) (Entered: 12/02/1999)
11/23/1999	581	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re its interrogs. to Expandable Grafts Partnership (bkb) (Entered: 12/08/1999)
11/23/1999	582	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re its rqsts. for adm. to Expandable Grafts Partnership (bkb) (Entered: 12/08/1999)
11/23/1999	583	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re its 3rd set interrogs. to Cordis Corp. (bkb) (Entered: 12/08/1999)
11/23/1999	584	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re its rqsts. for adm. to Cordis Corp. (bkb) (Entered: 12/08/1999)
11/23/1999	585	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. re their joint interrogs. to Cordis Corp. (bkb) (Entered: 12/08/1999)
11/23/1999	586	CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. re their joint interrogs. to Expandable Grafts Partnership (bkb) (Entered: 12/08/1999)
11/24/1999	587	CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re amended ntc. depos. of Dr. George Andros (bkb) (Entered: 12/08/1999)
11/24/1999	588	CERTIFICATE OF SERVICE re Medtronic AVE, Inc.'s 3rd set rqsts. prod. docs. to Cardiovascular

Systems & Guidant Corp. (bkb) (Entered: 12/08/1999)

11/24/1999 589 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re 3rd set rqsts. prod. docs. to Boston Scientific & Scimed Life Systems (bkb) (Entered: 12/08/1999)

11/26/1999 -- Deadline updated; set Telephone Conference for 8:30 3/13/00 ; before Magistrate-Judge Thyng (bkb) (Entered: 11/26/1999)

11/26/1999 -- Deadline updated; set Notice of Compliance deadline to 9:00 3/8/00 ; tele-conf. before Magistrate-Judge Thyng (bkb) (Entered: 11/26/1999)

11/29/1999 590 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re subpoena to J. Gary Jordan (bkb) (Entered: 12/08/1999)

11/29/1999 591 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re its 3rd set interrogs. & 3rd rqst. prod. docs. to Boston Scientific & Scimed Life Sys. (bkb) (Entered: 12/08/1999)

11/29/1999 592 CERTIFICATE OF SERVICE by Advanced Cardio Sys re obj. & resp. to Boston Scientific's & SciMed Life Systems' 1st set interrogs. (bkb) (Entered: 12/08/1999)

11/29/1999 593 STIPULATION with proposed order for extension(s) of time to respnd to certain written discovery (see stip. for details). (bkb) (Entered: 12/08/1999)

11/30/1999 594 STIPULATION with proposed order ext. time till 12/20/99 for service of final requests for adm. (bkb) (Entered: 12/08/1999)

11/30/1999 595 ORDER, set Telephone Conference for 4:00 3/6/00 (signed by Judge Mary P. Thyng) copies to: cnsl. (bkb) (Entered: 12/08/1999)

12/01/1999 597 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re ntc. of Rule 30(b)(6) depos. of Johnson & Johnson (bkb) (Entered: 12/08/1999)

12/01/1999 598 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re ntc. of Rule 30(b)(6) depos. of Cordis Corp. (bkb) (Entered: 12/08/1999)

12/01/1999 599 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re subpoena to Bodic Industries, Inc. (bkb) (Entered: 12/08/1999)

12/01/1999 600 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re ntc. of Rule 30(b)(6) depos. of Expandable Grafts Partnership. (bkb) (Entered: 12/08/1999)

12/01/1999 601 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re subpoena to Norman Noble, Inc. (bkb) (Entered: 12/08/1999)

12/01/1999 602 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re subpoena to RMS Company (bkb) (Entered: 12/08/1999)

12/02/1999 596 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re ntc. depos. of Philip Romano (bkb) (Entered: 12/08/1999)

12/03/1999 603 NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Cordis Corp. under Rule 30(b)(6) on 12/13/99 at 9:30 a.m. (bkb) (Entered: 12/08/1999)

12/07/1999 604 CERTIFICATE OF SERVICE by Cordis Corporation re ntc. of subpoena to Cook, Inc. (bkb) (Entered: 12/15/1999)

12/09/1999 605 CERTIFICATE OF SERVICE by Cordis Corporation re ntc. of subpoena to Thompson & Knight, LLP (bkb) (Entered: 12/15/1999)

12/09/1999 606 NOTICE by Boston Scientific, Scimed Life Systems to take deposition of Cordis Corp. on 12/16/99 at 9:30 (bkb) (Entered: 12/15/1999)

12/09/1999 -- So Ordered granting [593-1] stipulation granting [594-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (bkb) (Entered: 12/15/1999)

12/09/1999 607 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. obj. & resp. to Cordis' 4th rqst. prod. docs. (bkb) (Entered: 12/15/1999)

12/09/1999 608 CERTIFICATE OF SERVICE re Exponent, Inc.'s obj. & resp. to Cordis' subpoena for prod. docs. (bkb) (Entered: 12/15/1999)

12/10/1999 609 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re resp. to 4th rqst. for docs. & things (bkb) (Entered: 12/15/1999)

12/14/1999 610 CERTIFICATE OF SERVICE by Advanced Cardio Sys re obj. & resp. to pltf's 4th set interrogs. (bkb) (Entered: 12/16/1999)

12/15/1999 611 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. obj. & resp. to pltf's 3rd set interrogs. (bkb) (Entered: 12/16/1999)

12/15/1999 612 CERTIFICATE OF SERVICE by Medtronic AVE, Inc. re obj. & resp. to Boston Scientific's &

Scimed's 1st set interrogs. & Medtronic AVE's obj. & resp. to Cordis' 4th set interrogs. (bkb) (Entered: 12/16/1999)

12/20/1999 613 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's obj. & resp. to Boston Scientific's & Scimed's 1st set interrogs. to Cordis (bkb) (Entered: 12/20/1999)

12/20/1999 614 CERTIFICATE OF SERVICE by Cordis Corporation re pltf's rqsts. for adm. dir. to Boston Scientific & Scimed (bkb) (Entered: 12/20/1999)

12/20/1999 615 CERTIFICATE OF SERVICE by Cordis Corporation re requests for adm. dir. to Medtronic AVE, Inc. (bkb) (Entered: 12/20/1999)

12/20/1999 616 CERTIFICATE OF SERVICE by Cordis Corporation re rqsts. for adm. dir. to Advanced Cardiovascular (bkb) (Entered: 12/20/1999)

12/20/1999 617 CERTIFICATE OF SERVICE by Advanced Cardio Sys, Guidant Corporation re resp. & obj. to Medtronic Ave, Inc.'s 1st set interrogs. (bkb) (Entered: 12/22/1999)

12/20/1999 618 Letter (12/20/99) to Judge Robinson from Ms. Rogowski (bkb) (Entered: 12/22/1999)

12/21/1999 619 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re their 1st set rqsts. adm. dir. to Cordis & their 1st set rqsts. adm. dir. to Expandable Grafts Partnership (bkb) (Entered: 12/22/1999)

12/22/1999 620 CERTIFICATE OF SERVICE re Medtronic AVE, Inc.'s s. for adm. to Cordis Corp. & 2nd rqsts. adm. to Expandable Grafts Partnership; AND defts' joint rqsts. for adm. to Cordis & joint rqsts. for adm. to Expandable Grafts Partnership. (bkb) (Entered: 12/23/1999)

01/10/2000 621 Letter dated 1/10/00 from S. Balick, Esq. to Judge Robinson; (SEALED) (lf) (Entered: 01/13/2000)

01/10/2000 622 CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: 2nd supplemental response to pltf's 1st set of interrogs (nos. 5-11) (lf) (Entered: 01/13/2000)

01/11/2000 623 CERTIFICATE OF SERVICE by Expandable Grafts; re: answers to Boston Scientific Corp. and Scimed Life Systems, Inc. 2nd set of interrogs (lf) (Entered: 01/13/2000)

01/11/2000 624 CERTIFICATE OF SERVICE by Expandable Grafts; Re: objections and answers to defts joint interrogs to counterclaim defts (nos. 1-25) (lf) (Entered: 01/13/2000)

01/11/2000 625 CERTIFICATE OF SERVICE by Expandable Grafts; Re: responses to Medtronic Ane, inc. rqst for admissions to Expandable Grafts Partnerships (lf) (Entered: 01/13/2000)

01/11/2000 626 CERTIFICATE OF SERVICE by Cordis Corporation; Re: objections and responses to Medtronic AVE's rqst for admissions (lf) (Entered: 01/13/2000)

01/11/2000 627 CERTIFICATE OF SERVICE by Cordis Corporation; Re: answers and objections to Medtronic AVE's 3rd set of interrogs (nos. 19-30) (lf) (Entered: 01/13/2000)

01/11/2000 628 CERTIFICATE OF SERVICE by Cordis Corporation; Re: supplemental objections and responses to deft Arterial Engineering, Inc's 1st set of interrogs to pltf (nos. 2,3,5,8,11,14 and 16) (lf) (Entered: 01/13/2000)

01/11/2000 629 CERTIFICATE OF SERVICE by Cordis Corporation; Re: objections and responses to Advanced Cardiovascular 3rd set of interrogs (nos. 12-35) (lf) (Entered: 01/13/2000)

01/11/2000 630 CERTIFICATE OF SERVICE by Expandable Grafts; Re: objections and answers to Medtronic AVE, Inc. interrogs to Expandable Grafts Partnership (nos. 17-18) (lf) (Entered: 01/13/2000)

01/11/2000 631 CERTIFICATE OF SERVICE by Cordis Corporation; Re: response to joint interrogs (nos. 1-25) (lf) (Entered: 01/13/2000)

01/12/2000 632 CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: objections and responses to pltf's 3rd set of interrogs to Advanced Cardiovascular Systems (nos. 16-27) (lf) (Entered: 01/13/2000)

01/12/2000 633 CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: 2nd supplemental response to pltf's 1st set of interrogs (nos. 5-11) (lf) (Entered: 01/13/2000)

01/18/2000 634 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: response to pltf's 3rd set of interrogs and 2nd amended objections and supplemental responses (lf) (Entered: 01/19/2000)

01/18/2000 635 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: objections and responses (lf) (Entered: 01/19/2000)

01/18/2000 636 CERTIFICATE OF SERVICE by Cordis Corporation; answers and objections (lf) (Entered: 01/19/2000)

01/20/2000 637 CERTIFICATE OF SERVICE by Cordis Corporation; Objections and responses to defts' joint requests for admissions (nos.1-31) (lf) (Entered: 01/21/2000)

01/20/2000	638	CERTIFICATE OF SERVICE by Cordis Corporation; answers and objections to Medtronic Ave's rqst for admission no. 42 (lf) (Entered: 01/21/2000)
01/20/2000	639	CERTIFICATE OF SERVICE by Cordis Corporation; objections and responses to Boston Scientific Corp and Scimed Life Systems, Inc. 1st set of rqst for admissions (lf) (Entered: 01/21/2000)
01/20/2000	640	CERTIFICATE OF SERVICE by Cordis Corporation; Expandable Grafts Partnership's response to Boston Scientific Corp. and Scimed Life Systems. Inc's 1st set of rqsts for admission (lf) (Entered: 01/21/2000)
01/20/2000	641	CERTIFICATE OF SERVICE by Expandable Grafts; Re: response to deflt Medtronic Ave, Inc's 2nd set of rqsts for admissions no. 36 (lf) (Entered: 01/21/2000)
01/20/2000	642	CERTIFICATE OF SERVICE by Expandable Grafts; Re: responses to Sdvanced Cardiovascular Systems, Inc. Medtronic Ave, Inc., Boston Scientific Corp. and Scimed Life Systems, joint rqsts for admissions to Expandable Grafts Partnership (nos. 1-3) (lf) (Entered: 01/21/2000)
01/20/2000	643	CERTIFICATE OF SERVICE by Advanced Cardio Sys; re: Objections and responses to pltf rqst to admit (nos. 1-32) (lf) (Entered: 01/21/2000)
01/26/2000	644	CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: responses to pltf's rqst to admit (lf) (Entered: 01/27/2000)
01/27/2000	646	Letter dated 1/27/00 from Patricia Smink Rogowski, Esq. to Judge Robinson; Re: cnsl rqsting an in-person status conference to address certain discovery disputes that arose during factual discovery (lf) (Entered: 01/31/2000)
01/27/2000	647	CERTIFICATE OF SERVICE by Medtronic AVE, Inc.; Re: responses to pltf's rqst to admit (lf) (Entered: 01/31/2000)
02/02/2000	--	CLERK'S NOTE: Docket sheet has no DI 645 (lf) (Entered: 02/02/2000)
02/02/2000	649	Letter dated 2/2/00 from Steven Balick, Esq. to Judge Robinson; Re: response to 1/27/00 letter from Medtronic concerning depositions that AVE noticed shortly before the discovery cut-off in this case (lf) Modified on 02/07/2000 (Entered: 02/07/2000)
02/04/2000	648	CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: objections and responses to pltf's 3rd set of interrogs (Nos.16-27) and 2nd supplemental response to pltf's 1st set of interrogs (nos. 5-11) (lf) (Entered: 02/07/2000)
02/04/2000	650	ORDER, cnsl to follow procedures outlined in order for discovery disputes (see order for details) (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/10/2000)
02/08/2000	651	CERTIFICATE OF SERVICE by Advanced Cardio Sys; Re: Objections and responses to Medtronic AVE, Inc's 3rd set of rqsts for production of documents and things to defts Advanced Cardiovascular Systems, Inc and Guidant Corp. (nos. 12-13) (lf) (Entered: 02/10/2000)
02/11/2000	652	Letter dated 2/11/00 from Patricia Smink Rogowski, Esq. to Judge Robinson; Re: Since Medtronic AVE's 1/27/00 letter submitted by Mr. DiGiovanni regarding discovery disputes was served, a number of additional discovery issues have become ripe 9- would like to discuss them during 2/15/00 telecnf. (lf) (Entered: 02/15/2000)
02/14/2000	653	Letter dated 2/14/00 from Frederick Cottrell, III, Esq. to Judge Robinson; Re: agenda for 2/15/00 telecnf. scheduled to address teo interdefendant discovery issues that Medtronic had added to the Court's agenda (lf) (Entered: 02/15/2000)
02/16/2000	654	Letter dated 2/16/00 from Josy Ingersoll, Esq. to Judge RObinson; Re: filing expert reports for in camera review as rqsted by court (lf) (Entered: 02/17/2000)
02/16/2000	655	Letter dated 2/16/00 from Francis DiGiovanni to Judge Robinson; Re: supplying court with expert reports for in camera review as rqsted by court (lf) (Entered: 02/17/2000)
02/16/2000	656	ORDER, by 2/18/00 pltf identify documents referred to by Dr. Collins; see order for details (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 02/17/2000)
02/23/2000	657	TRANSCRIPT filed for dates of 2/15/00 ; Rptr: V, Gunning (lf) (Entered: 02/25/2000)
03/08/2000	658	ORDER, telecnf. scheduled for 5/25/00 at 9:00am; (signed by Judge Mary P. Thyng) copies to: cnsl (lf) (Entered: 03/10/2000)
03/10/2000	659	MOTION by Cordis Corporation to modify the briefing schedule for markman submissions and dispositive motions Answer Brief due 3/24/00 re: [659-1] motion (lf) (Entered: 03/13/2000)
03/14/2000	660	ORDER, telecnf. scheduled for 5/8/00 (signed by Judge Mary P. Thyng) copies to: cnsl (lf) (Entered: 03/20/2000)
03/15/2000	661	Answer Brief Filed by Medtronic AVE, Inc. [659-1] motion to modify the briefing schedule for markman submissions and dispositive motions - Reply Brief due 3/22/00 (lf) (Entered: 03/20/2000)

03/22/2000	662	NOTICE of Withdrawal of claims based on US Patent No. 5, 102, 417 by Cordis Corporation (lf) (Entered: 03/23/2000)
03/22/2000	663	Reply Brief Filed by Cordis Corporation, Expandable Grafts [659-1] motion to modify the briefing schedule for markman submissions and dispositive motions (lf) (Entered: 03/23/2000)
03/22/2000	664	ORDER granting [510-1] motion to Dismiss count I of AVE's counterclaim with respect to the 665 patent for lack of subject matter jurisdiction (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 03/24/2000)
03/22/2000	665	ORDER denying [484-1] motion for Reconsideration of [464-1] order; [463-1] order, [462-1] order (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 03/24/2000)
03/31/2000	666	MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 04/03/2000)
03/31/2000	667	ORDER denying [309-1] motion for Summary Judgment of invalidity of claims 1-3.9.11-14,17,22,25 and 29 of the '417 patent, denying [294-1] motion for Summary Judgment of invalidity of US Patent no. 5,102,417 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 04/03/2000)
04/03/2000	--	So Ordered granting [659-1] motion to modify the briefing schedule for markman submissions and dispositive motions (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/05/2000)
04/04/2000	668	NOTICE of Opening brief on the construction of terms in the claims of the Palmaz '762 and the Schatz '984 and '332 patents by Cordis Corporation (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	669	MOTION by Cordis Corporation, Expandable Grafts and Johnson&Johnson for Summary Judgment on Medtronic AVE, Inc's antitrust claims and counterclaims Answer Brief due 4/18/00 re: [669-1] motion (lf) (Entered: 04/06/2000)
04/04/2000	670	Opening Brief Filed by Cordis Corporation, Expandable Grafts and Johnson&Johnson [669-1] motion for Summary Judgment on Medtronic AVE, Inc's antitrust claims and counterclaims - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	671	MOTION by Cordis Corporation for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Boston Scientific Corp and SciMed Life Systems, Inc Answer Brief due 4/18/00 re: [671-1] motion (lf) (Entered: 04/06/2000)
04/04/2000	672	Opening Brief Filed by Cordis Corporation [671-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Boston Scientific Corp and SciMed Life Systems, Inc - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	673	MOTION by Cordis Corporation for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date (lf) (Entered: 04/06/2000)
04/04/2000	674	Opening Brief Filed by Cordis Corporation [673-1] motion for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date - Answer Brief due 4/18/00 (lf) (Entered: 04/06/2000)
04/04/2000	675	MOTION by Cordis Corporation for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)
04/04/2000	676	Opening Brief Filed by Cordis Corporation [675-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Medtronic AVE, Inc. - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	677	MOTION by Cordis Corporation for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit Answer Brief due 4/18/00 re: [677-1] motion (lf) (Entered: 04/06/2000)
04/04/2000	678	Opening Brief Filed by Cordis Corporation [677-1] motion for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	679	Appendix to Brief Filed by Cordis Corporation Appending [678-1] opening brief, [676-1] opening brief, [674-1] opening brief, [672-1] opening brief, [670-1] opening brief; Volume 1 of 3; (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	680	Appendix to Brief Filed by Cordis Corporation Appending [678-1] opening brief, [676-1] opening brief, [674-1] opening brief, [672-1] opening brief, [670-1] opening brief; Volume 2 of 3; (SEALED) (lf) (Entered: 04/06/2000)
04/04/2000	681	Appendix to Brief Filed by Cordis Corporation Appending [678-1] opening brief, [676-1] opening brief, [674-1] opening brief, [672-1] opening brief, [670-1] opening brief; Volume 3 of 3; (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 682 NOTICE of Patents in suit and related patents jointly submitted by Cordis Corporation, Boston Scientific, Scimed Life Systems (lf) (Entered: 04/06/2000)

04/04/2000 683 NOTICE of File History for US Patent 4,739,762 by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 684 NOTICE of File History for US Patent 5,195,984 by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 685 NOTICE of File History for US Patent 5,102,417 by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 686 NOTICE of File History for US Patent 4,733,665 by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 687 NOTICE of File History for US Patent 5,902,332 by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 688 NOTICE of File History for US Patent 4,733,665 (reexamination No. 90-002493 & 90-002638) (Vol. 1) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 689 NOTICE of File History for US Patent 4,733,665 (reexamination No. 90-002493 & 90-002638) (Vol. 2) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 690 NOTICE of file history for US Patent 4,739,762 (reexamination no. 90/004,785) (Vol. 1) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 691 NOTICE of File History for US Patent 4,739,762 (Reexamination No. 90/004,785) (Vol. 2) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 692 NOTICE of File History for US Patent 4,739,762 (Reexamination no. 90/004,785) (Vol. 3) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Medtronic AVE, Inc. (lf) (Entered: 04/06/2000)

04/04/2000 693 Letter dated 4/4/00 from Christian Douglas Wright, Esq. to Judge Robinson; Re: filing joint appendices for the court's use in conjunction with the dispositive and claim construction motions (lf) (Entered: 04/06/2000)

04/04/2000 694 Opening Brief on the remaining claim construction issues Filed by Boston Scientific, Scimed Life Systems (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 695 NOTICE of EXHIBITS to Markman Brief by Boston Scientific, Scimed Life Systems (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 696 MOTION by Boston Scientific, Scimed Life Systems for Summary Judgment of non-infringement (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 697 Opening Brief Filed by Boston Scientific, Scimed Life Systems [696-1] motion for Summary Judgment of non-infringement - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 698 Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [697-1] opening brief (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 699 MOTION by Boston Scientific, Scimed Life Systems for Summary Judgment of invalidity of US Patent no. 5,902,332 (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 700 Opening Brief Filed by Boston Scientific, Scimed Life Systems [699-1] motion for Summary Judgment of invalidity of US Patent no. 5,902,332 - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 701 MOTION by Medtronic AVE, Inc. for Summary Judgment of invalidity and unenforceability of claims 1,3 and 5 of the US Patent no. 5,902,332 Answer Brief due 4/18/00 re: [701-1] motion (lf) (Entered: 04/06/2000)

04/04/2000 702 Opening Brief Filed by Medtronic AVE, Inc. [701-1] motion for Summary Judgment of invalidity and unenforceability of claims 1,3 and 5 of the US Patent no. 5,902,332 - Answer Brief due 4/18/00 (SEALED) (lf) (Entered: 04/06/2000)

04/04/2000 703 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [702-1] opening brief (SEALED) (lf) (Entered: 04/06/2000)

04/13/2000 704 Letter dated 4/13/00 from Steven Balick, Esq. to Judge Robinson; Re: Cordis, Guidant and Advanced Cardiovascular have reached an agreement resolving all pending patent disputes between the parties (lf) (Entered: 04/17/2000)

04/13/2000 705 STIPULATION of dismissal as to Deft Advanced Cardiovascular Systems, Inc. (lf) (Entered: 04/17/2000)

04/13/2000 709 Letter dated 4/13/00 from Patricia Rogowski, Esq. to Deputy Clerk, Friedkin; Re: enclosing copy of memo. of Medtronic in opposition to pltf's motion for reargument of the court's 6/18/99 memo. opinion and order (lf) (Entered: 04/27/2000)

04/17/2000 706 MOTION by Medtronic AVE, Inc. to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. COLLINS from offering any testimony on the Kula Declaration or twisting (lf) (Entered: 04/19/2000)

04/17/2000 707 Opening Brief Filed by Medtronic AVE, Inc. [706-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. COLLINS from offering any testimony on the Kula Declaration or twisting - Answer Brief due 5/1/00 (SEALED) (lf) (Entered: 04/19/2000)

04/17/2000 708 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [707-1] opening brief (SEALED) (lf) (Entered: 04/19/2000)

04/19/2000 -- So Ordered granting [705-1] dismiss/dismissal stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/20/2000)

04/27/2000 710 Copy of Answer Brief Filed by Medtronic AVE, Inc. in opposition to pltf's motion for reargument of the 6/18/99 memo. opinion and order (CLERK'S NOTE: Document originally filed on 7/26/99) (lf) Modified on 04/27/2000 (Entered: 04/27/2000)

04/28/2000 711 STIPULATION with proposed order to extend briefing schedule regarding dispositive motions and claim construction - to 5/16/00 (lf) (Entered: 04/28/2000)

04/28/2000 -- So Ordered granting [711-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 04/28/2000)

05/02/2000 712 Letter dated 5/2/00 from Josy Ingersoll, Esq. to Judge Robinson; Re: agenda for 5/3/00 telecnf. (lf) (Entered: 05/04/2000)

05/03/2000 713 Letter dated 5/3/00 from Steven Balick, Esq. to Judge Robinson; Re: response to BSC's letter of 5/2/00 (lf) (Entered: 05/04/2000)

05/15/2000 714 ORDER, telecnf. scheduled for 8/1/00 (signed by Judge Mary P. Thyng) copies to: cnsl (lf) (Entered: 05/16/2000)

05/16/2000 715 Answer Brief Filed by Medtronic AVE, Inc. [673-1] motion for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date - Reply Brief due 5/23/00 (lf) (Entered: 05/18/2000)

05/16/2000 716 Answer Brief Filed by Medtronic AVE, Inc. [675-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Medtronic AVE, Inc. - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 717 Answer Brief Filed by Medtronic AVE, Inc. [677-1] motion for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 718 Answer Brief Filed by Medtronic AVE, Inc. in response to Cordis opening brief on the construction of terms in claims of the '762, '984 and '332 patents (SEALED) (lf) Modified on 05/18/2000 (Entered: 05/18/2000)

05/16/2000 719 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 1 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 720 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 2 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 721 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 3 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 722 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 4 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 723 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 5 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 724 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 6 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 725 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [717-1] answer brief, [716-1] answer brief, [715-1] answer brief; Vol. 7 of 7 (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000 727 Answer Brief in opposition to BSC's opening brief on claim construction issues Filed by Cordis Corporation (SEALED) (lf) (Entered: 05/18/2000)

05/16/2000	728	Answer Brief Filed by Cordis Corporation [699-1] motion for Summary Judgment of invalidity of US Patent no. 5,902,332 - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	729	Answer Brief Filed by Cordis Corporation [696-1] motion for Summary Judgment of non-infringement - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	730	Appendix to Brief Filed by Cordis Corporation Appending [729-1] answer brief, [728-1] answer brief, [727-1] answer brief, [726-1] answer brief (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	732	Answer Brief Filed by Boston Scientific [673-1] motion for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date - Reply Brief due 5/23/00 (lf) (Entered: 05/18/2000)
05/16/2000	734	Answer Brief Filed by Boston Scientific [675-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Medtronic AVE, Inc. - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	735	Answer Brief Filed by Boston Scientific [677-1] motion for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	736	Appendix to Brief Filed by Boston Scientific Appending [735-1] answer brief, [734-1] answer brief, [732-1] answer brief (SEALED) (lf) (Entered: 05/18/2000)
05/16/2000	737	STIPULATION and proposed order re: Medtronic shall have until 5/24/00 to file a brief in opposition to the opening brief in support of the Summary judgment motion of the Cordis antitrust claims and counterclaims (lf) (Entered: 05/22/2000)
05/16/2000	738	Answer Brief Filed by Cordis Corporation [701-1] motion for Summary Judgment of invalidity and unenforceability of claims 1,3 and 5 of the US Patent no. 5,902,332 - Reply Brief due 5/23/00 (SEALED) (lf) (Entered: 05/24/2000)
05/17/2000	731	Opening Brief Filed by Boston Scientific in support of its application to enforce Cordis agreement to Forgo a claim of willful infringement of the '332 patent (SEALED) (lf) (Entered: 05/18/2000)
05/17/2000	733	Appendix to Brief Filed by Boston Scientific Appending [731-1] opening brief (SEALED) (lf) (Entered: 05/18/2000)
05/18/2000	--	CLERK'S NOTE: this case docket does not have a DI 726 (lf) (Entered: 05/18/2000)
05/23/2000	--	So Ordered granting [737-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 05/26/2000)
05/25/2000	739	STIPULATION with proposed order to file amended answer and counterclaim (lf) (Entered: 05/26/2000)
05/30/2000	--	So Ordered granting [739-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 05/31/2000)
05/30/2000	740	AMENDED ANSWER to 3rd Amended Complaint of Cordis and COUNTERCLAIMS by Medtronic AVE, Inc. against Cordis Corporation, Expandable Grafts (filed in accord. w/DI 739; DI 740 prev. attached to DI 739 as Exhibit A) (bkb) (Entered: 12/14/2000)
05/31/2000	741	Answer Brief Filed by Cordis Corporation in opposition to BSC's motion to dismiss Cordis' claim of willful infringement of the Schatz '332 patent (SEALED) (lf) (Entered: 06/01/2000)
06/02/2000	742	Letter dated 6/2/00 from Francis DiGiovanni to Judge Robinson; Re: submitted by Medtronic outlining discovery dispute to be heard by the court on 6/6/00 (lf) (Entered: 06/06/2000)
06/05/2000	743	Letter dated 6/5/00 from Frederick Cottrell, III, Esq. to Judge Robinson; Re: Advanced Cardiovascular Systems outline as to the discovery dispute to be discussed at the telecnf. for 6/6/00 (lf) (Entered: 06/06/2000)
06/05/2000	744	Letter dated 6/5/00 from Josy Ingersoll, Esq. to judge Robinson; Re: BOston Scientific Corp. and Scimed Life Systems outline as to the discovery dispute cnf scheduled for 6/6/00 (lf) (Entered: 06/06/2000)
06/05/2000	745	STIPULATION with proposed order extending briefing schedule - all reply brief to the dispositive motions and claim construction due on 6/13/00 ; Medtronics reply brief on motion to strike due 6/23/00 (lf) (Entered: 06/06/2000)
06/06/2000	--	So Ordered granting [745-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/07/2000)
06/06/2000	746	Answer Brief Filed by Cordis Corporation [706-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. COLLINS from offering any testimony on the Kula Declaration or twisting - Reply Brief due 6/13/00 (SEALED) (lf) (Entered: 06/07/2000)

06/07/2000	747	Reply Brief Filed in further support of its application to enforce Cordis' agreement to forgo a claim of willful infringement of the '332 patent by Boston Scientific (SEALED) (lf) Modified on 06/09/2000 (Entered: 06/09/2000)
06/08/2000	748	Letter dated 6/8/00 from Steven Margolin, Esq. to Judge Robinson; Re: bringing to courts attention recent decision of the court of appeals for the Federal Circuit bearing on an issue in the caption case (lf) (Entered: 06/09/2000)
06/08/2000	749	TRANSCRIPT filed for dates of 6/6/00; Rptr: B. Gaffigan (lf) (Entered: 06/09/2000)
06/09/2000	750	Steno Notes for 6/6/00; Rptr: B. Gaffigan (lf) (Entered: 06/09/2000)
06/12/2000	751	STIPULATION with proposed order for pltf to respond to amended answer and counterclaims by 6/23/00 (lf) (Entered: 06/14/2000)
06/13/2000	752	Reply Brief Filed by Medtronic AVE, Inc. [701-1] motion for Summary Judgment of invalidity and unenforceability of claims 1,3 and 5 of the US Patent no. 5,902,332 (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	753	Appendix to Brief Filed by Medtronic AVE, Inc. Appending [752-1] reply brief; Vol. I of II; (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	754	Appendix to Brief Filed by Medtronic AVE, Inc. Appending [752-1] reply brief; Vol 2 of 2; (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	755	Reply brief on claim construction and Reply Brief Filed by Boston Scientific, Scimed Life Systems [696-1] motion for Summary Judgment of non-infringement (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	756	Reply Brief Filed by Boston Scientific, Scimed Life Systems [699-1] motion for Summary Judgment of invalidity of US Patent no. 5,902,332 (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	757	Reply Brief Filed by Cordis Corporation [675-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Medtronic AVE, Inc. (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	760	Reply Brief Filed by Cordis Corporation [671-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Boston Scientific Corp and SciMed Life Systems, Inc (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	761	Reply Brief on the construction of terms in the claims of the Palmez '762 and the Schatz '984 and '332 patents Filed by Cordis Corporation (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	758	Reply Brief Filed by Cordis Corporation [673-1] motion for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	759	Reply Brief Filed by Cordis Corporation [677-1] motion for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit (SEALED) (lf) (Entered: 06/15/2000)
06/13/2000	762	Appendix to Brief Filed by Cordis Corporation Appending [759-1] reply brief, [758-1] reply brief, [761-1] reply brief, [760-1] reply brief, [757-1] reply brief (SEALED) (lf) (Entered: 06/15/2000)
06/14/2000	763	Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [756-1] reply brief, [755-1] reply brief (SEALED) (lf) (Entered: 06/15/2000)
06/14/2000	764	Letter dated 6/14/00 from Steven Margolin, Esq. to Judge Robinson; Re: rqsting oral argument (lf) (Entered: 06/15/2000)
06/14/2000	765	MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for T. Cy. Walker to Appear Pro Hac Vice (lf) (Entered: 06/19/2000)
06/14/2000	--	So Ordered granting [751-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/19/2000)
06/15/2000	766	NOTICE of change of address of out of state cnsl by Advanced Cardio Sys (lf) (Entered: 06/19/2000)
06/19/2000	--	So Ordered granting [765-1] motion for T. Cy. Walker to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 06/21/2000)
06/21/2000	767	Letter dated 6/21/00 from Josy Ingersoll, Esq. to Judge Robinson; Re: rqsting oral argument (lf) (Entered: 06/22/2000)
06/23/2000	768	Reply Brief Filed by Medtronic AVE, Inc. [706-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. COLLINS from offering any testimony on the Kula Declaration or twisting (SEALED) (lf) (Entered: 06/27/2000)
06/23/2000	769	ANSWER by Cordis Corporation and Johnson&Johnson to [457-2] amended counter claim of Medtronic AVE, Inc. (lf) (Entered: 06/27/2000)

06/23/2000 770 ANSWER by Expandable Grafts to [457-2] amended counter claim of Deft Medtronic AVE, Inc. (lf) (Entered: 06/27/2000)

06/26/2000 771 Letter dated 6/26/00 from Francis DiGiovanni to Judge Robinson; Re: AVE agrees that oral argument on certain issues raised by the pending summary judgment motions would be helpful (lf) (Entered: 06/28/2000)

06/30/2000 772 ORDER, oral argument scheduled for 8/7/00 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 07/05/2000)

07/21/2000 773 ORDER, oral argument rescheduled for 8/16/00 (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 07/24/2000)

07/28/2000 774 STIPULATION with proposed order regarding dates by which certain rebuttal expert reports on damages are due (lf) (Entered: 08/01/2000)

07/31/2000 775 Letter dated 7/31/00 from Steven Balick, Esq. to Judge Robinson; Re: letter regarding Medtronics objection to the expert report of Howard Rudge, Esq. (lf) (Entered: 08/01/2000)

07/31/2000 776 Letter dated 7/31/00 from Patricia Rogowski, Esq. to Judge Robinson; Re: agenda outlining matters to be presented to the court during telecnf. scheduled for 8/1/00 (lf) (Entered: 08/01/2000)

08/01/2000 -- So Ordered granting [774-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/02/2000)

08/07/2000 777 TRANSCRIPT filed for dates of 8/1/00; Rptr: B. Gaffigan (lf) (Entered: 08/08/2000)

08/08/2000 778 ORDER, cnsl to provide status letter by 9/29/00 (signed by Judge Mary P. Thyng) copies to: cnsl (lf) (Entered: 08/08/2000)

08/08/2000 780 STIPULATION with proposed order regarding the date by which Medtronic AVE's rebuttal expert report is due (lf) (Entered: 08/10/2000)

08/09/2000 779 Steno Notes for 8/9/00; Rptr: B. Gaffigan (lf) (Entered: 08/10/2000)

08/10/2000 -- So Ordered granting [780-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/15/2000)

08/15/2000 781 Letter dated 8/15/00 from Steven Balick, Esq. to Judge Robinson; Re: agenda for 8/16/00 hearing (lf) (Entered: 08/16/2000)

08/16/2000 -- Motion hearing held, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 08/16/2000)

08/16/2000 -- Motion hearing held, Robinson, J., sitting; Rptr: V. Gunning (lf) (Entered: 08/18/2000)

08/17/2000 782 TRANSCRIPT filed for dates of 8/16/00; Rptr: V. Gunning (lf) (Entered: 08/17/2000)

08/17/2000 783 Letter dated 8/17/00 from Steven Balick, Esq. to Judge Robinson; Re: enclosing copy of Mr. Maurer's 12/9/00 letter and Mr. Timmons 12/17/99 reponse (lf) (Entered: 08/18/2000)

08/21/2000 784 MOTION by Medtronic AVE, Inc. with Proposed Order for Gerald Konkle, Esq. to Appear Pro Hac Vice (lf) (Entered: 08/24/2000)

08/22/2000 785 Letter dated 8/22/00 from Frederick Cottrell, Esq. to V. Gunning; Re: not party to case (lf) (Entered: 08/24/2000)

08/24/2000 -- So Ordered granting [784-1] motion for Gerald Konkle, Esq. to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 08/29/2000)

09/06/2000 786 CERTIFICATE OF SERVICE by Cordis Corporation; Re: Rebuttal of Dr. Mark Wholey (lf) (Entered: 09/11/2000)

09/06/2000 787 Letter dated 9/6/00 from Josy Ingersoll, Esq. to Judge Robinson; Re: order of trial issues to be discussed during cnf set for 9/7/00 (lf) (Entered: 09/11/2000)

09/06/2000 788 Letter dated 9/6/00 from Steven Balick, Esq. to Judge Robinson; Re: outlining Cordis' position regarding structure of trial (lf) (Entered: 09/11/2000)

09/06/2000 789 Letter dated 9/6/00 from Patricia S. Rogowski, Esq. to Judge Robinson; Re: response to Mr. Balick's letter to the court of 9/6/00 (lf) (Entered: 09/11/2000)

09/06/2000 792 Letter dated 9/6/00 from Steven Balick, Esq. to Judge Robinson; Re: Cordis responds to court's latest rulings on claim construction (lf) (Entered: 09/14/2000)

09/07/2000 790 MEMORANDUM ORDER, ruling of claim construction (see order for details) (signed by Judge Sue L. Robinson) copies to: cnsl (lf) (Entered: 09/11/2000)

09/07/2000 -- Status conference held, Robinson, J. sitting; Rptr: V) Gunning (lf) (Entered: 09/11/2000)

09/07/2000 791 TRANSCRIPT filed for dates of 9/7/00; Rptr: V. Gunning (lf) (Entered: 09/11/2000)

09/12/2000	793	Letter dated 9/12/00 from Josy Ingersoll, Esq. to Judge Robinson; Re: BSC and Scimed Life Systems position as to the affect of the courts claim construction ruling and pending motions for summary judgment (lf) (Entered: 09/14/2000)
09/12/2000	794	Letter dated 9/12/00 from Francis DiGiovanni to Judge Robinson; Re: addressing courts claim construction and pending summary judgment motions (lf) (Entered: 09/14/2000)
09/19/2000	795	Letter dated 9/19/00 from Francis DiGiovanni to Judge Robinson; Re: response to Cordis'9/12/00 letter to the court (lf) (Entered: 09/22/2000)
09/21/2000	796	Letter dated 9/21/00 from Josy Ingersoll, Esq. to Judge Robinson; Re: response to Cordis' 9/12/00 letter to the court (lf) (Entered: 09/22/2000)
09/25/2000	797	Letter dated 9/25/00 from Steven Balick, Esq. to Judge Robinson; Re: agenda for telecnf. scheduled for 9/26/00 (lf) (Entered: 09/27/2000)
09/25/2000	798	Letter dated 9/25/00 from Steven Balick, Esq. to Judge Robinson; Re: response to 9/12/00 letters concerning summary judgment (lf) (Entered: 09/27/2000)
09/26/2000	--	Tele-conference held, Robinson, J., sitting; Rptr: K. Maurer (lf) (Entered: 09/27/2000)
09/27/2000	799	Steno Notes for 9/26/00; Rptr: K. maurer (lf) (Entered: 09/27/2000)
09/28/2000	819	MOTION by Boston Scientific in Limine no. 1 to preclude Cordis from introducing evidence or suggesting to the jury that the patent office found that claims 22-30 of the US Patent No. 5,902,332 covered the NIR stent (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	820	MOTION by Boston Scientific in Limine No.2 to preclude Cordis from introducing evidence of Advice of cnsl to prove infringement (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	821	MOTION by Boston Scientific in Limine no. 3 to preclude "expert" testimony by attorney Martin Adelman (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	822	MOTION by Boston Scientific in Limine no. 4 to preclude duplicative testimony of Nigel Buller regarding infringement (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	823	MOTION by Boston Scientific in Limine no. 5 to preclude allegations of "copying" or "industry recognition" (SEALED)(lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	824	MOTION by Boston Scientific in Limine no.6 to preclude Cordis from introducing evidence or referring to BSC's volutary recall of the NIR or Ranger with Sox or to any ensuing Government investigation (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	825	MOTION by Boston Scientific in Limine no.7 to preclude Cordis from introducing evidence at trial regarding its settlement negotiations with ACS (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	826	MOTION by Boston Scientific in Limine no. 8 to preclude Cordis from suggesting to the jury that the fact that ACS settled with Cordis is probative on the question of whether ACS' stents infringe Cordis's patents (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	827	MOTION by Boston Scientific in Limine no. 9 to preclude Cordis' expert Creighton Hoffman from testifying at trial about irrelevant and unfairly prejudicial matters that he testified about his deposition (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	828	MOTION by Boston Scientific in Limine no. 10 to preclude Cordis' expert Creghton Hoffman from testifying regarding Cordis' capacity to manufacture, market and distribute stent products (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	829	MOTION by Boston Scientific in Limine no. 11 to preclude Cordis from proffering any witness, other than Mr. Joseph Gruchacz to testify at trial concerning Cordis' capacity to Manufacture, distribute, and sell stent products and further to limit Mr. Gruchacz to the testimony he provided during his deposition on capacity taken (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	830	MOTION by Boston Scientific in Limine no. 12 to preclude testimony from Cordis' expert Mr. Raymond Kaden (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	831	MOTION by Boston Scientific in Limine no. 13 to preclude Cordis' expert Mr. Hoffman from testifying at BSC's damages trial concerning the reasonable royalty rate that would be applicable to either AVE or BSC (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/28/2000	832	MOTION by Boston Scientific in Limine no. 14 to preclude Cordis from introducing evidence at trial regarding the basis for the valuations of the Fiscell patents set forth in the project pepper papers (SEALED) (lf) Modified on 10/03/2000 (Entered: 09/29/2000)
09/29/2000	800	MOTION by Medtronic AVE, Inc. in Limine (no.1) to exclude portions of the rebuttal expert report of John Collins, Ph.D and to preclude Dr. Collins from offering testimony on the Kula

declaration or twisting (lf) (Entered: 09/29/2000)

09/29/2000 801 MOTION by Medtronic AVE, Inc. in Limine (no.2) to preclude Cordis from using computer generated "morphing" animations and from using the term "building blocks" or its equivalent at trial (lf) (Entered: 09/29/2000)

09/29/2000 802 Opening Brief Filed by Medtronic AVE, Inc. [801-1] motion in Limine (no.2) to preclude Cordis from using computer generated "morphing" animations and from using the term "building blocks" or its equivalent at trial - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 803 Exhibit F (video tape) to Medtronic opening brief in support of its motion in limine (no. 2) to preclude pltf Cordis from using computer generated "morphing" animation and from using the term "Building Blocks" or its equivalent at trial (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 804 MOTION by Medtronic AVE, Inc. with Proposed Order in Limine (no. 3) to preclude evidence in the liability trial relating to pre-litigation communications and settlements (lf) (Entered: 09/29/2000)

09/29/2000 805 Opening Brief Filed by Medtronic AVE, Inc. [804-1] motion in Limine (no. 3) to preclude evidence in the liability trial relating to pre-litigation communications and settlements - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 806 MOTION by Medtronic AVE, Inc. with Proposed Order in Limine (no. 4) to preclude pltf Cordis from offering the testimony of Howard Rudge (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 807 Opening Brief Filed by Medtronic AVE, Inc. [806-1] motion in Limine (no. 4) to preclude pltf Cordis from offering the testimony of Howard Rudge - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 808 MOTION by Medtronic AVE, Inc. in Limine (no.5) to require Cordis to limit the accused products (lf) (Entered: 09/29/2000)

09/29/2000 809 Opening Brief Filed by Medtronic AVE, Inc. [808-1] motion in Limine (no.5) to require Cordis to limit the accused products - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 810 MOTION by Medtronic AVE, Inc. in Limine (no.6) to preclude testimony of Raymond Kaden (lf) (Entered: 09/29/2000)

09/29/2000 811 Opening Brief Filed by Medtronic AVE, Inc. [810-1] motion in Limine (no.6) to preclude testimony of Raymond Kaden - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 812 MOTION by Medtronic AVE, Inc. in Limine (no.7) to preclude pltf from offering testimony of Creighton Hoffman relating to Lost Profits (lf) (Entered: 09/29/2000)

09/29/2000 813 Opening Brief Filed by Medtronic AVE, Inc. [812-1] motion in Limine (no.7) to preclude pltf from offering testimony of Creighton Hoffman relating to Lost Profits - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 814 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [813-1] opening brief; Vol. 1 of 2; (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 815 Appendix to Brief Filed by Medtronic AVE, Inc. Appending [813-1] opening brief; Vol 2 of 2; (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 816 MOTION by Medtronic AVE, Inc. in Limine to preclude pltf from introducing any evidence or testimony relating to damages accruing to Ethicon Endo-Surgery, Inc. up to and including 4/27/97 (lf) (Entered: 09/29/2000)

09/29/2000 817 Opening Brief Filed by Medtronic AVE, Inc. [816-1] motion in Limine to preclude pltf from introducing any evidence or testimony relating to damages accruing to Ethicon Endo-Surgery, Inc. up to and including 4/27/97 - Answer Brief due 10/13/00 (SEALED) (lf) (Entered: 09/29/2000)

09/29/2000 818 MOTION by Medtronic AVE, Inc. to join BSC's motions in limine filed onn 9/28/00 (lf) (Entered: 09/29/2000)

09/29/2000 834 Letter dated 9/29/00 from Patricia S. Rogowski, Esq to Judge Thygne; Re: status (lf) (Entered: 10/03/2000)

09/29/2000 835 TRANSCRIPT filed [0-0] telephone conference for dates of 9/26/00; Rptr: K. MAurer (lf) (Entered: 10/03/2000)

09/29/2000 836 MOTIONS (21) by Cordis Corporation in Limine Answer Brief due 10/13/00 re: [836-1] motion (SEALED) (lf) Modified on 10/11/2000 (Entered: 10/11/2000)

09/29/2000 837 Appendix to Motions in limine (DI 836) Filed by Cordis Corporation Appending (SEALED) (lf) (Entered: 10/11/2000)

10/02/2000	833	Letter dated 10/2/00 from Christian Wright, Esq. to Judge Robinson; Re: supplying court with proposed order that was inadvertently omitted from the motion in limine no. 8 (lf) (Entered: 10/03/2000)
10/06/2000	838	Answer Brief Filed by Boston Scientific [836-1] motion in Limine(tab 1) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	839	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 2) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	840	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 3) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	841	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 4) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	842	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 5) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	843	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 6) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	844	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 7) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	845	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 8) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	846	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 9) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	847	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 10) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	848	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 11) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	849	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 13) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	850	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 14) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	851	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 15) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	852	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 17) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	853	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 18) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	854	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 19) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	855	Answer Brief Filed by Boston Scientific [836-1] motion in Limine (tab 21) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	856	NOTICE of Proposed special verdict form for the damages phase by Boston Scientific (lf) (Entered: 10/11/2000)
10/06/2000	857	NOTICE of Proposed Voir Dire Questions to the jury trial by Boston Scientific (lf) (Entered: 10/11/2000)
10/06/2000	858	NOTICE of Proposed Voir Dire Questions by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	859	NOTICE of Proposed special verdict form by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	860	NOTICE of information Medtronic intends to rely on at trial by Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)
10/06/2000	861	Answer Brief Filed by Medtronic AVE, Inc. [836-1] motion in Limine (21) - Reply Brief due 10/13/00 (SEALED) (lf) (Entered: 10/11/2000)
10/06/2000	862	Appendix to Brief Filed by Medtronic AVE, Inc. Appending [861-1] answer brief (SEALED) (lf) (Entered: 10/11/2000)
10/10/2000	863	CROSS MOTION by Cordis Corporation in Limine Opening brief due 10/24/00 re: [863-1] cross motion (lf) (Entered: 10/11/2000)
10/10/2000	864	Answer Brief Filed by Cordis Corporation [832-1] motion in Limine no. 14 to preclude Cordis

from introducing evidence at trial regarding the basis for the valuations of the Fiscell patents set forth in the project pepper papers - Reply Brief due 10/17/00, [831-1] motion in Limine no. 13 to preclude Cordis' expert Mr. Hoffman from testifying at BSC's damages trial concerning the reasonable royalty rate that would be applicable to either AVE or BSC - Reply Brief due 10/17/00, [830-1] motion in Limine no. 12 to preclude testimony from Cordis' expert Mr. Raymond Kaden - Reply Brief due 10/17/00, [829-1] motion in Limine no. 11 to preclude Cordis from proffering any witness, other than Mr. Joseph Gruchacz to testify at trial concerning Cordis' capacity to Manufacture, distribute, and sell stent products and further to limit Mr. Gruchacz to the testimony he provided during his deposition on capacity taken - Reply Brief due 10/17/00, [828-1] motion in Limine no. 10 to preclude Cordis' expert Creighton Hoffman from testifying regarding Cordis' capacity to manufacture, market and distribute stent products - Reply Brief due 10/17/00, [827-1] motion in Limine no. 9 to preclude Cordis' expert Creighton Hoffman from testifying at trial about irrelevant and unfairly prejudicial matters that he testified about his deposition - Reply Brief due 10/17/00, [826-1] motion in Limine no. 8 to preclude Cordis from suggesting to the jury that the fact that ACS settled with Cordis is probative on the question of whether ACS' stents infringe Cordis's patents - Reply Brief due 10/17/00, [825-1] motion in Limine no.7 to preclude Cordis from introducing evidence at trial regarding its settlement negotiations with ACS - Reply Brief due 10/17/00, [824-1] motion in Limine no.6 to preclude Cordis from introducing evidence or referring to BSC's volutary recall of the NIR or Ranger with Sox or to any ensuing Government investigation - Reply Brief due 10/17/00, [823-1] motion in Limine no. 5 to preclude allegations of "copying" or "industry recognition" - Reply Brief due 10/17/00, [822-1] motion in Limine no. 4 to preclude duplicative testimony of Nigel Buller regarding infringement - Reply Brief due 10/17/00, [821-1] motion in Limine no. 3 to preclude "expert" testimony by attorney Martin Adelman - Reply Brief due 10/17/00, [820-1] motion in Limine No.2 to preclude Cordis from introducing evidence of Advice of cnsl to prove infringement - Reply Brief due 10/17/00, [819-1] motion in Limine no. 1 to preclude Cordis from introducing evidence or suggesting to the jury that the patent office found that claims 22-30 of the US Patent No. 5,902,332 covered the NIR stent - Reply Brief due 10/17/00 (SEALED) (lf) (Entered: 10/11/2000)

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|------------|-----|--|
| 10/10/2000 | 865 | Answer Brief Filed by Cordis Corporation [816-1] motion in Limine to preclude pltf from introducing any evidence or testimony relating to damages accruing to Ethicon Endo-Surgery, Inc. up to and including 4/27/97 - Reply Brief due 10/17/00, [812-1] motion in Limine (no.7) to preclude pltf from offering testimony of Creighton Hoffman relating to Lost Profits - Reply Brief due 10/17/00, [810-1] motion in Limine (no.6) to preclude testimony of Raymond Kaden - Reply Brief due 10/17/00, [808-1] motion in Limine (no.5) to require Cordis to limit the accused products - Reply Brief due 10/17/00, [806-1] motion in Limine (no. 4) to preclude pltf Cordis from offering the testimony of Howard Rudge - Reply Brief due 10/17/00, [804-1] motion in Limine (no. 3) to preclude evidence in the liability trial relating to pre-litigation coommunications and settlements - Reply Brief due 10/17/00, [801-1] motion in Limine (no.2) to preclude Cordis from using computer generated "morphing" amimations and from using the term "building blocks" or its equivalent at trial - Reply Brief due 10/17/00, [800-1] motion in Limine (no.1) to exclude portions of the rebuttal expert report of John Collins, Ph.D and to preclude Dr. Collins from offering testimony on the Kula declaration or twisting - Reply Brief due 10/17/00 (SEALED) (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 866 | Appendix to Brief Filed by Cordis Corporation Appending [865-1] answer brief, [864-1] answer brief; Vol 1 of 2 (SEALED) (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 867 | Appendix to Brief Filed by Cordis Corporation Appending [865-1] answer brief, [864-1] answer brief; Vol. 2 of 2 (SEALED) (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 868 | CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems; Re: Notice pursuant to 35 USC 282 (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 869 | Proposed Voir dire questions by Cordis Corporation (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 870 | Proposed Verdict Sheet filed by Cordis Corporation (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 871 | Proposed Special Verdict Sheet for the liability phase filed by Boston Scientific (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 872 | JOINT Preliminary Proposed Jury instructions (LIABILITY PHASE) by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc. (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 873 | JOINT Proposed Jury instructions (Liability Phase) (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 874 | JOINT Proposed Preliminary Jury instructions (BSC Damages Phase) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 875 | JOINT Proposed Jury instructions (BSC Damages Phase) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts (lf) (Entered: 10/11/2000) |
| 10/10/2000 | 876 | JOINT Proposed Preliminary Jury instructions (Liability Phase) by Cordis Corporation, Boston |

Scientific, Scimed Life Systems, Expandable Grafts (lf) (Entered: 10/11/2000)

10/10/2000 877 Joint Proposed Jury instructions (Liability phase) by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts (lf) (Entered: 10/11/2000)

10/10/2000 878 Joint Proposed Preliminary Jury instructions (AVE damages phase) by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)

10/10/2000 879 Joint Proposed Jury instructions (AVE Damages phase) by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc. (lf) (Entered: 10/11/2000)

10/10/2000 880 Proposed Verdict Sheet filed by Cordis Corporation (lf) (Entered: 10/11/2000)

10/10/2000 881 NOTICE of Proposed Jury Verdict Forms by Cordis Corporation (lf) (Entered: 10/11/2000)

10/10/2000 882 JOINT Proposed pre-trial order filed by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts (Vol. 1 of 5) (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 883 JOINT Proposed pre-trial order filed by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts; Vol. 2 of 5 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 884 JOINT Proposed pre-trial order filed by Cordis Corporation, Boston Scientific, Scimed Life Systems, Expandable Grafts; Vol 3 of 5 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 885 JOINT Proposed pre-trial order filed by Cordis Corporation, Arterial Vascular, Boston Scientific, Expandable Grafts; Vol. 4 of 5 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 886 JOINT Proposed pre-trial order filed by Cordis Corporation, Arterial Vascular, Boston Scientific, Expandable Grafts; Vol . 5 of 5 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 887 JOINT Proposed pre-trial order filed by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc. ; Vol. 1 of 3 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 888 JOINT Proposed pre-trial order filed by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc.; Vol. 2 of 3 (SEALED) (lf) (Entered: 10/11/2000)

10/10/2000 889 JOINT Proposed pre-trial order filed by Cordis Corporation, Expandable Grafts, Medtronic AVE, Inc.; Vol. 3 of 3 (SEALED) (lf) (Entered: 10/11/2000)

10/11/2000 890 Letter dated 10/11/00 from Steven Balick, Esq. to Judge Robinson; Re: agenda for pretrial scheduled for 10/13/00 (lf) (Entered: 10/12/2000)

10/11/2000 891 MOTION by Cordis Corporation to enter judgment in AVE's favor dismissing Cordis'claims of infringement of the 332 patent and to dismiss AVE's 332 counterclaims as moot, if the court adheres to its current claim construction (lf) (Entered: 10/12/2000)

10/11/2000 892 Opening Brief Filed by Cordis Corporation [891-1] motion to enter judgment in AVE's favor dismissing Cordis'claims of infringement of the 332 patent and to dismiss AVE's 332 counterclaims as moot, if the court adheres to its current claim construction - Answer Brief due 10/25/00 (SEALED) (lf) (Entered: 10/12/2000)

10/11/2000 893 Declaration of John Collins (SEALED) (lf) (Entered: 10/12/2000)

10/12/2000 894 RESPONSE by Boston Scientific in opposition to Cordis cross-motion to preclude defts from suggesting that settlement agreements are probative of the strength of Cordis claims (SEALED) (lf) (Entered: 10/16/2000)

10/12/2000 895 RESPONSE by Boston Scientific in opposition to cordis cross-motion to preclude BSC from introducing evidence that ACS may have acquired a license from Cordis prior to 4/3/00 (SEALED) (lf) Modified on 10/16/2000 (Entered: 10/16/2000)

10/12/2000 896 ORDER denying [701-1] motion for Summary Judgment of Invalidity and unenforceability of claims 1,3 and 5 of the US Patent no. 5,902,332, denying [699-1] motion for Summary Judgment of invalidity of US Patent no. 5,902,332 (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/12/2000 897 ORDER denying [696-1] motion for Summary Judgment of non-infringement, denying [671-1] motion for Summary Judgment of infringement of the Palmaz '762 and Schatz '332 patents by Boston Scientific Corp and SciMed Life Systems, Inc (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/12/2000 898 ORDER granting in part, denying in part [677-1] motion for Summary Judgment on the enforceability of the '762, '984, and '332 patents-in-suit (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/12/2000 899 ORDER denying [673-1] motion for Summary Judgment granting the '762 patent the benefit of a 11/7/85 filing date (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/12/2000 900 ORDER, BSC's application is granted based on the plain language of the letter agreement and

the equities attendant thereto. (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/12/2000 901 ORDER denying [706-1] motion to Strike portions of rebuttal expert report of John Collins, Ph.D. and to preclude Dr. COLLINS from offering any testimony on the Kula Declaration or twisting (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/16/2000)

10/13/2000 -- Pre-trial conference held, ROBINSON, J., sitting; Rptr: V. Gunning (lf) (Entered: 10/13/2000)

10/13/2000 902 Letter dated 10/13/00 from Steven Balick Esq. to Judge Robinson; Re: correcting cited case in in limine case (lf) (Entered: 10/16/2000)

10/13/2000 903 NOTICE of supplemental notice to Cordis Corp. by Medtronic AVE, Inc. (lf) (Entered: 10/16/2000)

10/13/2000 904 Letter dated 10/13/00 from Patricia Rogowski, Esq. to Judge Robinson (SEALED) (lf) (Entered: 10/16/2000)

10/17/2000 905 Letter dated 10/17/00 from Patricia Rogowski, Esq. to Judge Robinson (SEALED) (lf) (Entered: 10/18/2000)

10/17/2000 906 Letter dated 10/17/00 from Josy Ingersoll. Esq. to Judge ROBINSON; Re: giving court estimate of time required to try issues in the Fiscell case (lf) (Entered: 10/18/2000)

10/17/2000 907 TRANSCRIPT filed [0-0] pre-trial conference for dates of 10/13/00; Rptr: V. Gunning (lf) (Entered: 10/18/2000)

10/18/2000 908 Letter dated 10/18/00 from PATricia S. Rogowski, Esq. to court; Re: filing substitution pages to sealed letter to Judge Robinson (lf) (Entered: 10/18/2000)

10/18/2000 909 Letter dated 10/18/00 from Steven Balick, Esq. to Judge Robinson; Re: response to BSC's October 17, 2000 letter to the court (lf) (Entered: 10/19/2000)

10/23/2000 910 Answer Brief Filed by Medtronic AVE, Inc. [891-1] motion to enter judgment in AVE's favor dismissing Cordis'claims of infringement of the 332 patent and to dismiss AVE's 332 counterclaims as moot, if the court adheres to its current claim construction - Reply Brief due 10/30/00 (lf) (Entered: 10/24/2000)

10/25/2000 911 MOTION by Medtronic AVE, Inc. in Limine no. 10 to preclude testimony of Mark Wholey, M.D. based on recently obtained deposition evidence Answer Brief due 11/8/00 re: [911-1] motion (lf) (Entered: 10/26/2000)

10/25/2000 912 Opening Brief Filed by Medtronic AVE, Inc. [911-1] motion in Limine no. 10 to preclude testimony of Mark Wholey, M.D. based on recently obtained deposition evidence - Answer Brief due 11/8/00 (SEALED) (lf) (Entered: 10/26/2000)

10/26/2000 913 Letter dated 10/26/00 from Steven Balick, esq. to Judge Robinson; Re: Rqst that court reconsider decision to try Cordis' willfulness charge against AVE as part of the liability trial (lf) (Entered: 10/27/2000)

10/27/2000 914 Letter dated 10/27/00 from court to cnsi; Re: enclosing copies of voir dire; preliminary jury instructions and trial schedule (lf) (Entered: 10/27/2000)

10/27/2000 915 ORDER, rulings of various in limine motions; SEE ORDER FOR DETAILS (signed by Judge Sue L. Robinson) copies to: cnsi (lf) (Entered: 10/27/2000)

10/30/2000 916 Letter dated 10/30/00 from patricia Rogowski, Esq. to Judge Robinson; Re: rqst that court reconsider its decision to try Cordis' charge of willfulness against AVE as part of the liability trial (lf) (Entered: 10/30/2000)

10/31/2000 917 Reply Brief Filed by Cordis Corporation [891-1] motion to enter judgment in AVE's favor dismissing Cordis'claims of infringement of the 332 patent and to dismiss AVE's 332 counterclaims as moot, if the court adheres to its current claim construction and answering brief in opposition to AVE's cross-motion for costs, and an order striking Cordis' motion and the Collins declaration (lf) (Entered: 10/31/2000)

10/31/2000 926 Letter (10/31/00) to Judge Robinson from Mr. Balick re dropping of willfulness' charge of infringement against AVE & deleting its charge of infringement of claim 52 of the '762 patent. (bkb) (Entered: 11/03/2000)

11/01/2000 918 Answer Brief Filed by Cordis Corporation [911-1] motion in Limine no. 10 to preclude testimony of Mark Wholey, M.D. based on recently obtained deposition evidence - Reply Brief due 11/8/00 (bkb) (Entered: 11/03/2000)

11/01/2000 919 TRANSCRIPT filed for dates of 10/30/00 (tele-conf.) (bkb) (Entered: 11/03/2000)

11/01/2000 927 Letter to Judge Robinson from Ms. Rogowski re allocation of time during trial (bkb) (Entered: 11/03/2000)

11/02/2000	920	Steno Notes for 10/30/00 tele-conf. by rprr. Gaffigan (bkb) (Entered: 11/03/2000)
11/02/2000	921	Letter to Judge Robinson from Ms. Rogowski re live trial witness list. (bkb) (Entered: 11/03/2000)
11/02/2000	922	Letter to Judge Robinson from mr. Balick re Cordis Corp.'s witness list. (bkb) (Entered: 11/03/2000)
11/02/2000	923	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports concerning AVE (bkb) (Entered: 11/03/2000)
11/02/2000	924	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports concerning ACS (bkb) (Entered: 11/03/2000)
11/02/2000	925	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports concerning BSC (bkb) (Entered: 11/03/2000)
11/02/2000	928	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports concerning B.Sc.,M.B. (bkb) (Entered: 11/03/2000)
11/02/2000	929	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports concerning George Andros, M.D. (bkb) (Entered: 11/03/2000)
11/02/2000	930	CERTIFICATE OF SERVICE by Cordis Corporation re suppl. expert reports of Richard G. Stringfellow, Ph.D. (bkb) (Entered: 11/03/2000)
11/02/2000	931	CERTIFICATE OF SERVICE by Cordis Corporation re expert reports of Kaden, Herrmann, Wylie, & Hoffman (bkb) (Entered: 11/03/2000)
11/02/2000	932	CERTIFICATE OF SERVICE by Cordis Corporation re suppl. expert report of John M. Collins (bkb) (Entered: 11/03/2000)
11/02/2000	933	CERTIFICATE OF SERVICE by Cordis Corporation re expert report of Howard J. Rudge, Esq. (bkb) (Entered: 11/03/2000)
11/02/2000	934	Letter to Judge Robinson from Mr. Balick in resp. to AVE's letter request for reallocation fo time during trial. (bkb) (Entered: 11/03/2000)
11/03/2000	935	Letter to Judge Robinson from Mr. Balick re opening remarks to the jury (bkb) (Entered: 11/08/2000)
11/06/2000	936	ORDER mooting [911-1] motion in Limine no. 10 to preclude testimony of Mark Wholey, M.D. based on recently obtained deposition evidence (signed by Judge Sue L. Robinson) copies to: counsel (bkb) (Entered: 11/08/2000)
11/06/2000	--	Jury trial held, Robinson, J. presiding; jury selection commenced and completed; evidentiary portion of trial commenced, Day 1; reporters Maurer & Gaffigan present. (bkb) Modified on 11/17/2000 (Entered: 11/17/2000)
11/07/2000	937	RESPONSE (OBJECTIONS) by Cordis Corporation in opposition to the introduction of evidence regarding the Boneau '331 and Birdsall '152 patents (bkb) (Entered: 11/08/2000)
11/07/2000	938	Steno (daily) Notes for 11/6/00 jury trial (bkb) (Entered: 11/09/2000)
11/07/2000	--	Jury trial held, Day #2, Robinson, J., presiding; reporters Gunning & Dibbs present. (bkb) (Entered: 12/05/2000)
11/08/2000	--	Jury trial held, Robinson, J., Day 3; reporters Maurer & Gaffigan present. (bkb) (Entered: 11/17/2000)
11/08/2000	--	Conference held (in Courtroom), Robinson, J.; reporter Gaffigan present. (bkb) (Entered: 11/17/2000)
11/09/2000	939	MEMORANDUM by Medtronic AVE, Inc. in opposition to [937-1] opposition response (bkb) (Entered: 11/09/2000)
11/09/2000	--	Jury trial held; Robinson, J.; reporter Gunning present. (bkb) (Entered: 11/17/2000)
11/13/2000	--	Jury trial held, Day 5, Robinson, J., presiding; reporters Maurer & Gaffigan present. (bkb) (Entered: 12/05/2000)
11/14/2000	940	Steno Notes for 11/8/00 by rprr. Gaffigan (bkb) (Entered: 11/14/2000)
11/14/2000	941	Steno Notes for 11/13/00 by rprr. Gaffigan (bkb) (Entered: 11/14/2000)
11/14/2000	942	Deft. Medtronic AVE's statement in support of admissibility of Cordis's w/draw of US Patent No. 5,102,417 from suit w/prejudice. (bkb) (Entered: 11/14/2000)
11/14/2000	943	Opening Brief Filed by Medtronic AVE, Inc. in support of Medtronic AVE's motion for judgment as a matter of law. (bkb) (Entered: 11/14/2000)

11/14/2000 -- MOTION in open court by Medtronic AVE, Inc. for Judgment as a Matter of Law re: [0-0] motion (bkb) (Entered: 11/15/2000)

11/14/2000 -- Jury trial held, Day #6, Robinson, J., presiding; reporter Gunning present. (bkb) (Entered: 12/05/2000)

11/15/2000 944 BENCH MEMORANDUM by Cordis Corporation on Doctrine of Equivalents (bkb) (Entered: 11/15/2000)

11/15/2000 -- Jury trial held, Day #7, Robinson, J., presiding; reporter Gunning present. (bkb) (Entered: 12/05/2000)

11/16/2000 945 MEMORANDUM by Cordis Corporation in opposition to the introduction of evidence by BSC regarding the Israel '303 & '120 patents-----SEALED (bkb) (Entered: 11/16/2000)

11/16/2000 -- Jury trial held, Day #8, Robinson, J., presiding; reporters Maurer & Gaffigan present. (bkb) (Entered: 12/05/2000)

11/17/2000 946 Proposed SUPPLEMENTAL Jury instructions by Medtronic AVE, Inc. (bkb) (Entered: 11/20/2000)

11/17/2000 947 BENCH MEMORANDUM by Medtronic AVE, Inc. re prosecution history estoppel (bkb) (Entered: 11/20/2000)

11/17/2000 -- Jury trial held, Day # 9, Robinson, J., presiding; reporters Maurer & Gaffigan present. (bkb) (Entered: 12/05/2000)

11/17/2000 1115 Jury instructions--AVE LIABILITY (rld) (Entered: 12/05/2001)

11/20/2000 948 Daily Steno Notes for 11/17/00 by reporter Gaffigan. (bkb) (Entered: 11/20/2000)

11/20/2000 949 Daily Steno Notes for 11/16/00 by reporter Gaffigan (bkb) (Entered: 11/20/2000)

11/20/2000 950 Letter (1 pg., dated 11/17/00) to Judge Robinson from Mr. Diskant re problem with verdict form. (bkb) (Entered: 11/20/2000)

11/20/2000 951 Letter (11/17/00) to Judge Robinson, w/attachment, re proposed verdict form. (bkb) (Entered: 11/20/2000)

11/20/2000 952 MOTION by Cordis Corporation with Proposed Order to exclude (under Daubert) Weld height measurments relied on by Dr. Snyder Answer Brief due 12/4/00 re: [952-1] motion (bkb) (Entered: 11/20/2000)

11/20/2000 953 Opening Brief Filed by Cordis Corporation [952-1] motion to exclude (under Daubert) Weld height measurments relied on by Dr. Snyder (bkb) (Entered: 11/20/2000)

11/20/2000 954 Letter (11/20/00) to Judge Robinson from Ms. Ingersoll re list of witnesses to be called at trial. (bkb) (Entered: 11/20/2000)

11/20/2000 956 RESPONSE by Boston Scientific in opposition to [945-1] opposition memorandum (bkb) (Entered: 11/22/2000)

11/20/2000 -- Jury trial held, Day # 10, Robinson, J., presiding; reporter Gunning present. (bkb) (Entered: 12/05/2000)

11/21/2000 955 JURY VERDICT for Cordis Corporation and against Medtronic AVE; see verdict sheet for details. (bkb) Modified on 11/22/2000 (Entered: 11/22/2000)

11/21/2000 957 MOTION by Medtronic AVE, Inc. with Proposed Order for David Leichtman to Appear Pro Hac Vice re: [957-1] motion (bkb) (Entered: 11/22/2000)

11/21/2000 -- Jury trial held, Day # 11, Robinson, J., presiding; reporter Gunning present. (bkb) (Entered: 12/05/2000)

11/22/2000 958 TRANSCRIPT (Vol. A) filed for dates of 11/6/00 (bkb) (Entered: 11/22/2000)

11/22/2000 959 TRANSCRIPT (Vol. B) filed for dates of 11/7/00 (bkb) (Entered: 11/22/2000)

11/22/2000 960 TRANSCRIPT (Vol. C) filed for dates of 11/8/00 (bkb) (Entered: 11/22/2000)

11/22/2000 961 TRANSCRIPT (Vol. D) filed for dates of 11/9/00 (bkb) (Entered: 11/22/2000)

11/22/2000 962 TRANSCRIPT (Vol. E) filed for dates of 11/13/00 (bkb) (Entered: 11/22/2000)

11/22/2000 963 TRANSCRIPT (Vol. F) filed for dates of 11/14/00 (bkb) (Entered: 11/22/2000)

11/22/2000 964 TRANSCRIPT (Vol. G) filed for dates of 11/15/00 (bkb) (Entered: 11/22/2000)

11/22/2000 965 TRANSCRIPT (Vol. H) filed for dates of 11/16/00 (bkb) (Entered: 11/22/2000)

11/22/2000 966 TRANSCRIPT (Vol. I) filed for dates of 11/17/00 (bkb) (Entered: 11/22/2000)

11/22/2000 967 TRANSCRIPT (Vol. J) filed for dates of 11/20/00 (bkb) (Entered: 11/22/2000)

11/22/2000 968 TRANSCRIPT (Vol. K) filed for dates of 11/20/00 (4:18 p.m.) (bkb) (Entered: 11/22/2000)

11/22/2000 969 TRANSCRIPT (Vol. L) filed for dates of 11/21/00 (bkb) (Entered: 11/22/2000)

11/22/2000 970 Letter to Judge Robinson from William E. Wallace,III, re verdict form. (bkb) (Entered: 11/27/2000)

11/22/2000 971 ORDER, dinner to be furnished for 11/20/00 for 10 jurors & 1 deputy marshal (signed by Judge Sue L. Robinson) copies to: financial administrator (bkb) (Entered: 11/27/2000)

11/22/2000 972 Steno Notes for 11/6/00 to 11/21/00 by reporter K. Maurer (bkb) (Entered: 11/27/2000)

11/27/2000 973 RESPONSE by Cordis Corporation in opposition to certain anticipated testimony by BSC's patent law expert. (bkb) (Entered: 11/27/2000)

11/27/2000 974 MEMORANDUM by Cordis Corporation on the lack of relevance of BSC's supposed good faith to the charge of contributory infringement. (bkb) (Entered: 11/27/2000)

11/27/2000 -- So Ordered granting [957-1] motion for David Leichtman to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (bkb) (Entered: 11/28/2000)

12/04/2000 1161 Letter to Judge Robinson from G. Badenoch enclosing BSC's comments on Cordis' new proposed jury instructions. (rld) (Entered: 07/12/2002)

12/06/2000 993 Opening Brief Filed by Boston Scientific, Scimed Life Systems [992-1] motion for Judgment as a Matter of Law that certain claim terms are not entitled to any scope of equivalents - Answer Brief due 12/20/00 (bkb) Modified on 01/05/2001 (Entered: 12/14/2000)

12/07/2000 992 MOTION by Boston Scientific, Scimed Life Systems for Judgment as a Matter of Law that certain claim terms are not entitled to any scope of equivalents Answer Brief due 12/21/00 re: [992-1] motion (bkb) (Entered: 12/14/2000)

12/07/2000 1116 Jury instructions--BSC LIABILITY (rld) (Entered: 12/05/2001)

12/08/2000 975 Joint Compendium of deposition designations & counterdesignations re pltf's motions for prelim. inj.--Vol. I (filed 3/9/98; docketed 12/8/00) Filed by Cordis Corporation (bkb) (Entered: 12/08/2000)

12/08/2000 976 VOLUME II---SEALED--filed by Cordis Corporation re depos. designations & counterdesignations re pltf's motions for prelim. inj. (filed 3/9/98; docketed 12/8/00) (bkb) Modified on 12/08/2000 (Entered: 12/08/2000)

12/08/2000 977 VOL. III---SEALED--filed by Cordis Corporation re despo. designations & counterdesignations re pltf's mot. prelim. inj.--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 978 VOL. IV---SEALED--Filed by Cordis Corporation re despo. designations & counterdesignations re pltf's motions for prelim. inj; filed 3/9/98; docketed 12/8/00. Appending (bkb) (Entered: 12/08/2000)

12/08/2000 979 Joint compendium--SEALED--of prelim. inj. hearing exhibits (Vol. XV); filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 980 Joint Compendium of prelim. inj. hrg. exhibits (Vol. XVI)---SEALED--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 981 Joint compendium of prelim. inj. hrg. exhibits (Vol. XVII)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 982 Joint Compenmdium of prelim. inj. hrg. exhibits-- Vol. XVIII)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 983 Joint Compendium of prelim. inj. hrg. (Vol. XIX)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 984 Joint Compendium of prelim. inj. hrg. exhibits (Vol. XX)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 985 Joint Compendium of prel. inj. hrg. exhibits--Vol. XXI)---SEALED--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 986 Joint Compendium of prelim. inj. hrg. exhibits--Vol. XXII--SEALED--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 987 Joint Compendium of depos. designations & counterdesignations re pltf's motions for prelim. inj. (Vol. V)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 988 Joint Compendium of depos. designations & counterdesignations re pltf's motions for prelim. inj.--Vol. 5---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) Modified on 12/08/2000 (Entered: 12/08/2000)

12/08/2000 989 Joint Compendium of depos. designations & counterdesignations re pltf's motions for prelim. inj. (Vol. IV)----SEALED--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 990 Joint Compendium of depos. designations & counterdesignations re pltf's prelim. inj. motions---Vol. III---SELAED--filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 991 Joint Compendium of depos. designations & counterdesignations re pltf's motions for prelim. inj. (Vol. II)---SEALED---filed 3/9/98; docketed 12/8/00. (bkb) (Entered: 12/08/2000)

12/08/2000 994 NOTICE of change of address by local counsel for Cordis Corporation (bkb) (Entered: 12/14/2000)

12/11/2000 995 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for John Bateman to Appear Pro Hac Vice re: [995-1] motion (bkb) (Entered: 12/14/2000)

12/11/2000 -- So Ordered granting [995-1] motion for John Bateman to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) Notice to all parties. (bkb) (Entered: 12/14/2000)

12/11/2000 996 MOTION by Medtronic AVE, Inc. with Proposed Order for Melvin Scolnick to Appear Pro Hac Vice re: [996-1] motion (bkb) (Entered: 12/14/2000)

12/11/2000 997 MOTION by Medtronic AVE, Inc. with Proposed Order for Mark G. Davis to Appear Pro Hac Vice (bkb) (Entered: 12/14/2000)

12/11/2000 998 MOTION by Medtronic AVE, Inc. with Proposed Order for Natalia V. Blinkova to Appear Pro Hac Vice re: [998-1] motion (bkb) (Entered: 12/14/2000)

12/11/2000 999 MOTION by Medtronic AVE, Inc. with Proposed Order for Donna M. Tanguay to Appear Pro Hac Vice (bkb) (Entered: 12/14/2000)

12/11/2000 1000 MOTION by Medtronic AVE, Inc. with Proposed Order for R.V. Lupo to Appear Pro Hac Vice re: [1000-1] motion (bkb) (Entered: 12/14/2000)

12/12/2000 1001 MOTION by Medtronic AVE, Inc. with Proposed Order for Jack Q. Lever, Jr. to Appear Pro Hac Vice (bkb) (Entered: 12/14/2000)

12/13/2000 1002 Proposed Verdict Sheet filed by Boston Scientific (bkb) (Entered: 12/14/2000)

12/13/2000 1003 Proposed Jury instructions by Boston Scientific, re damages. (bkb) (Entered: 12/14/2000)

12/13/2000 1004 Letter to Judge Robinson from Mr. Wright re BSC's pro. jury instructions re damages & pro. verdict form. (bkb) (Entered: 12/14/2000)

12/15/2000 1005 TRANSCRIPT filed for dates of 12/13/00 (tele-conf) (bkb) (Entered: 12/20/2000)

12/15/2000 -- Hearing , Robinson, J., presiding re: preliminary jury instructions & matters related to damages trial. (bkb) (Entered: 12/20/2000)

12/15/2000 1117 Jury instructions--BSC DAMAGES (rld) (Entered: 12/05/2001)

12/18/2000 1006 ORDER granting [1001-1] motion for Jack Q. Lever, Jr. to Appear Pro Hac Vice, granting [1000-1] motion for R.V. Lupo to Appear Pro Hac Vice, granting [999-1] motion for Donna M. Tanguay to Appear Pro Hac Vice, granting [998-1] motion for Natalia V. Blinkova to Appear Pro Hac Vice, granting [997-1] motion for Mark G. Davis to Appear Pro Hac Vice, granting [996-1] motion for Melvin Scolnick to Appear Pro Hac Vice (signed by Judge Sue L. Robinson) copies to: counsel. (bkb) (Entered: 12/20/2000)

12/18/2000 -- Jury trial held, Robinson, J., presiding; day 1; court reporters Maurer and Gaffigan present. (rdb) (Entered: 01/05/2001)

12/19/2000 1007 MEMORANDUM by Medtronic AVE, Inc. in support of the admissibility of evidence regarding the availability of Microstent I as a non-infringing substitute. (bkb) (Entered: 12/20/2000)

12/19/2000 1008 BENCH MEMORANDUM by Medtronic AVE, Inc. in support of admissibility of evidence regarding the Microstent I (bkb) (Entered: 12/20/2000)

12/19/2000 1009 Steno Notes for 12/13/00 by rpt. Maurer. (bkb) (Entered: 12/27/2000)

12/19/2000 -- Jury trial held, Robinson, J., presiding; Day 2; reporter Gunning present. (rdb) Modified on 01/08/2001 (Entered: 01/05/2001)

12/20/2000 -- Jury trial held, Robinson, J., presiding; day 3; court reporters Maurer and Gaffigan present. (rdb) (Entered: 01/05/2001)

12/21/2000 1010 MEMORANDUM by Medtronic AVE, Inc. in support of its position re testimony on reasonable royalty rate in hypothetical negotiation. (bkb) (Entered: 12/27/2000)

12/21/2000 -- Jury trial held, Robinson, J., presiding; day 4; court reporters Maurer and Gaffigan present. (rdb) (Entered: 01/05/2001)

12/21/2000 1118 Jury instructions--AVE DAMAGES (rld) (Entered: 12/05/2001)

12/22/2000	1011	Opening Brief Filed by Medtronic AVE, Inc. [0-0] motion for Judgment as a Matter of Law w/respect to ACS stents being non-infringing substitutes - Answer Brief due 1/5/01 (bkb) (Entered: 12/27/2000)
12/22/2000	1012	Opening Brief Filed by Medtronic AVE, Inc. [0-0] motion for Judgment as a Matter of Law as to damages accruing to Cordis prior to 10/21/97. - Answer Brief due 1/5/01 (bkb) (Entered: 12/27/2000)
12/22/2000	1013	JURY VERDICT for Cordis Corporation and against deft. AVE as follows; lost profits of \$192,800,460; reasonable royalty of 25% & reasonable royalty damages in the amount of \$77,274,625 for US sales; reasonable royalty rate for foreign sales is 0% and reasonable royalty damages for foreign sales is \$1,000,000. (bkb) (Entered: 12/27/2000)
12/27/2000	1014	Joint Compendium of deposition designations & counterdesignations re pltf's motios for prelim. inj: (Filed 3/9/98) by Advanced Cardio Sys, Guidant Corporation Appending (bkb) (Entered: 12/27/2000)
12/27/2000	1015	Joint Compendium (filed 3/9/98) of prelim. inj. hrg. exhibits (VOLUME I) (bkb) (Entered: 12/27/2000)
12/27/2000	1016	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---VOL. II (bkb) (Entered: 12/27/2000)
12/27/2000	1017	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)--VOL. III (bkb) (Entered: 12/27/2000)
12/27/2000	1018	Joint Compendium of prelim. inj. hrg. exhibits (VOL. IV--filed 3/9/98) (bkb) (Entered: 12/27/2000)
12/27/2000	1019	Joint Compendium of prelim. inj. hrg. exhibits (filed 3/9/98)--VOL. V (bkb) (Entered: 12/27/2000)
12/27/2000	1020	Joint Compendium of prelim. inj. hrg. exhibits (Vol. VI) filed 3/9/98. (bkb) (Entered: 12/27/2000)
12/27/2000	1021	Joint Compedium of prelim. inj. hrg. exhibits (FILED 3/9/98) re Vol. VII (bkb) (Entered: 12/27/2000)
12/27/2000	1022	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---Vol. VIII (bkb) (Entered: 12/27/2000)
12/27/2000	1023	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---Vol. IX (bkb) (Entered: 12/27/2000)
12/27/2000	1024	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---Vol. XI (bkb) (Entered: 12/27/2000)
12/27/2000	1025	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---VOL. XII (bkb) (Entered: 12/27/2000)
12/27/2000	1026	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---VOL. IX (bkb) (Entered: 12/27/2000)
12/27/2000	1027	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---VOL. X (bkb) (Entered: 12/27/2000)
12/27/2000	1028	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---VOL. XIII (bkb) (Entered: 12/27/2000)
12/27/2000	1029	Joint Compendium of prelim. inj. hrg. exhibits (FILED 3/9/98)---Vol. XIV (bkb) (Entered: 12/27/2000)
12/27/2000	1030	STIPULATION with proposed order amending Protective Order (dab) (Entered: 12/29/2000)
12/29/2000	1031	Steno Notes for 12/18/00-12/21/00 Rptr. K. Maurer (dab) Modified on 01/09/2001 (Entered: 12/29/2000)
01/03/2001	--	Deadline updated; set Telephone Conference for 8:30 1/8/01 (bkb) (Entered: 01/03/2001)
01/03/2001	--	So Ordered granting [1030-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (maw) (Entered: 01/09/2001)
01/05/2001	1032	Letter to Chief Judge Robinson from Josy Ingersoll, Esq. re scheduling. (maw) (Entered: 01/09/2001)
01/05/2001	1033	Letter to Judge Robinson from Mr. Margolin re matters to address at 1/8/01 tele-conf. (bkb) (Entered: 01/10/2001)
01/05/2001	1034	Letter to Judge Robinson from Ms. Rogowski re matters for 1/8/01 tele-conf. (bkb) (Entered: 01/10/2001)

01/08/2001 -- Tele-conference held, Robinson, J., presiding; reporter Gaffigan present. (bkb) (Entered: 01/10/2001)

01/09/2001 1035 Steno Notes for 1/8/01 by reporter Gaffigan. (bkb) (Entered: 01/10/2001)

01/09/2001 1036 TRANSCRIPT filed [0-0] telephone conference for dates of 1/8/01 (bkb) (Entered: 01/10/2001)

01/10/2001 -- Deadline updated; set Notice of Compliance deadline to 9:00 2/7/01 ; hearing re: inequitable conduct to be held 2/7/01 to 2/9/01. (rdb) (Entered: 01/10/2001)

01/11/2001 1037 Letter to counsel from Judge Robinson re: scheduling of inequitable conduct portion of trial. (rdb) (Entered: 01/18/2001)

01/11/2001 -- Deadline updated; set Notice of Compliance deadline to 9:00 2/7/01 (rdb) (Entered: 01/18/2001)

01/18/2001 -- Deadline updated; set Telephone Conference for 8:00 1/23/01 (bkb) (Entered: 01/18/2001)

01/23/2001 -- Tele-conference held, Robinson, J., presiding; court reporter Gunning present. (bkb) (Entered: 02/02/2001)

01/26/2001 1038 Letter to Judge Robinson from Steven Balick re:request for more time at inequitable conduct hearing. (bkb) (Entered: 01/29/2001)

01/29/2001 -- Deadline updated; set Telephone Conference for 8:00 1/31/01 (bkb) (Entered: 01/29/2001)

01/29/2001 1039 Letter to D.Clk.Strickler from Ms. Rogowski re: request for certain trial exhibits to be placed under seal. (bkb) (Entered: 01/29/2001)

01/29/2001 1040 Letter to Judge Robinson from Mr. Balick re: discovery dispute & 1/31/01 8:00 a.m. teleconf. (bkb) (Entered: 01/30/2001)

01/29/2001 1041 Letter to Judge Robinson from Ms. Ingersoll re: issues and witnesses for the inequitable conduct hearing for 2/7/01. (bkb) (Entered: 01/30/2001)

01/30/2001 1042 Letter to Judge Robinson from Ms. Rogowski re: discovery dispute & 01/31/01 8:00 a.m. teleconf. (bkb) (Entered: 01/30/2001)

01/30/2001 1043 Letter to Judge Robinson from Ms. Rogowski re: matters/witnesses AVE plans to produce at inequitable conduct hearing. (bkb) (Entered: 01/30/2001)

01/30/2001 1044 Letter to Judge Robinson from Ms. Rogowski re: Mr. Balick's ltr. of 01/25/01. (rld) (Entered: 02/05/2001)

02/02/2001 1045 Letter to Judge Robinson from Mr. Balick re Cordis' witnesses for 2/7/01 hearing. (rld) (Entered: 02/06/2001)

02/05/2001 1046 Letter to Judge Robinson from Mr. Balick re testimony of Dr. Criado. (rld) (Entered: 02/06/2001)

02/07/2001 -- Bench trial held, Day 1; Judge Robinson presiding; crt. rptr. Maurer & Gaffigan; re Liability. (rld) Modified on 02/20/2001 (Entered: 02/20/2001)

02/08/2001 1047 Steno Notes for 2/7/01; Rptr. B. Gaffigan (dab) (Entered: 02/15/2001)

02/08/2001 -- Bench trial held, day 2; Judge Robinson presiding; crt. rptr. Gunning; re Liability. (rld) (Entered: 02/20/2001)

02/09/2001 -- Bench trial held, Day 3; Judge Robinson presiding; crt. rptr. Maurer & Gaffigan; Liability. (rld) (Entered: 02/20/2001)

02/12/2001 1048 Steno Notes for 2/9/01; Rptr B. Gaffigan (dab) (Entered: 02/15/2001)

02/12/2001 -- Bench trial held, Day 4; Judge Robinson presiding; crt. rptr. Maurer & Gaffigan; re Liability. (rld) (Entered: 02/20/2001)

02/13/2001 1049 Steno Notes for 2/12/01; Rptr B. Gaffigan (dab) (Entered: 02/15/2001)

02/14/2001 1050 Steno Notes for 2/7/01-2/12/01; tele-conf re pre-hearing issues; crt. rptr. V. Gunning. (rld) (Entered: 02/22/2001)

02/16/2001 1051 TRANSCRIPT filed for tele-conf. of 1/31/01 (bkb) (Entered: 02/23/2001)

02/26/2001 1052 TRANSCRIPT filed [0-0] bench trial for dates of 2/7/01; Judge Robinson presiding; Volume A; daily copy. (rld) (Entered: 02/27/2001)

02/26/2001 1053 TRANSCRIPT filed [0-0] bench trial for dates of 2/8/01; Judge Robinson presiding; Volume B; daily copy. (rld) (Entered: 02/27/2001)

02/26/2001 1054 TRANSCRIPT filed [0-0] bench trial for dates of 2/9/01; Judge Robinson presiding; Volume C; daily copy. (rld) (Entered: 02/27/2001)

02/26/2001 1055 TRANSCRIPT filed [0-0] bench trial for dates of 2/12/01; Judge Robinson presiding; Volume D; daily copy. (rld) (Entered: 02/27/2001)

02/27/2001 1056 ORDER (signed by Judge Sue L. Robinson) ordering deft. to include argument on faulty jury instruction in its post-trial briefing and explain source of its juror information; copies to: cnsl. (rld) (Entered: 03/06/2001)

03/14/2001 1057 Letter to Judge Robinson from Ms. Rogowski enclosing letter from William Wallace III dated 3/13/01; and 1/3/01 article from Dover Sun-Times. (rld) (Entered: 03/15/2001)

03/15/2001 1058 Stipulated Post-Trial Brief Schedule Filed. (rld) (Entered: 03/16/2001)

03/16/2001 1059 MOTION by Cordis Corporation with Proposed Order for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent Answer Brief due 4/17/01 re: [1059-1] motion (per DI 1058) (rld) (Entered: 03/19/2001)

03/16/2001 1060 Opening Brief Filed by Cordis Corporation [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent - Answer Brief due 4/17/01 (rld) (Entered: 03/19/2001)

03/16/2001 1061 MOTION by Cordis Corporation with Proposed Order for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad Answer Brief due 4/17/01 re: [1061-1] motion (rld) (Entered: 03/19/2001)

03/16/2001 1062 Opening Brief Filed by Cordis Corporation [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad - Answer Brief due 4/17/01 (rld) (Entered: 03/19/2001)

03/16/2001 1063 Renewed MOTION by Medtronic AVE, Inc. with Proposed Order for Judgment as a Matter of Law re infringement claims Answer Brief due 4/17/01 re: [1063-1] motion (rld) (Entered: 03/19/2001)

03/16/2001 1064 Opening Brief Filed by Medtronic AVE, Inc. [1063-1] motion for Judgment as a Matter of Law re infringement claims - Answer Brief due 4/17/01---SEALED--- (rld) (Entered: 03/19/2001)

03/16/2001 -- So Ordered granting [1058-1] brief schedule stipulation reset Memorandum in Opposition Deadline to 4/13/01 re: [1068-1] trial brief, to 4/13/01 re: [1067-1] trial brief , and set Memorandum in Support Deadline to 4/27/01 re: [1068-1] trial brief, to 4/27/01 re: [1067-1] trial brief , and reset Answer Brief Deadline to 4/17/01 re: [1069-1] motion for Judgment as a Matter of Law, 4/17/01 re: [1069-2] motion for New Trial, 4/17/01 re: [1065-1] motion for New Trial, 4/17/01 re: [1063-1] motion for Judgment as a Matter of Law re infringement claims, 4/17/01 re: [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, 4/17/01 re: [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent , and reset Reply Brief Deadline to 5/8/01 re: [1069-1] motion for Judgment as a Matter of Law, 5/8/01 re: [1069-2] motion for New Trial, 5/8/01 re: [1065-1] motion for New Trial, 5/8/01 re: [1063-1] motion for Judgment as a Matter of Law re infringement claims, 5/8/01 re: [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, 5/8/01 re: [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent , and set Notice of Compliance deadline to 4/18/01 re Briefs on Issues Related to an Injunction (filed by Cordis) Answering briefs due 5/16/01 and Reply briefs due 5/30/01 re issues related to an injunction. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 03/26/2001)

03/19/2001 1065 MOTION by Medtronic AVE, Inc. with Proposed Order for New Trial Answer Brief due 4/17/01 re: [1065-1] motion (rld) (Entered: 03/19/2001)

03/19/2001 1066 Opening Brief Filed by Medtronic AVE, Inc. [1065-1] motion for New Trial - Answer Brief due 4/17/01---SEALED---1 (rld) (Entered: 03/19/2001)

03/19/2001 1067 POST TRIAL BRIEF by Medtronic AVE, Inc. Relating to the unenforceability of the '762 and '984 patents due to inequitable conduct. (rld) (Entered: 03/19/2001)

03/19/2001 1068 POST TRIAL BRIEF by Boston Scientific, Scimed Life Systems in Support of Defense that the patents in suit are unenforceable. (rld) (Entered: 03/19/2001)

03/19/2001 1069 MOTION by Boston Scientific, Scimed Life Systems for Judgment as a Matter of Law , or in the alternative for New Trial Answer Brief due 4/17/01 re: [1069-1] motion, Answer Brief due 4/17/01 re: [1069-2] motion (rld) (Entered: 03/19/2001)

03/19/2001 1070 Opening Brief Filed by Boston Scientific, Scimed Life Systems [1069-1] motion for Judgment as a Matter of Law - Answer Brief due 4/17/01, [1069-2] motion for New Trial - Answer Brief due 4/17/01 (rld) (Entered: 03/19/2001)

03/19/2001 1071 JUDGMENT for Cordis Corporation against Medtronic AVE, Inc. to the issues of infringement

- and invalidity on claims 23, 51, and 54 of the '762 patent and claims 1 and 3 of the '984 patent. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/21/2001)
- 03/21/2001 1072 Letter to Judge Robinson from Ms. Rogowski re 3/21/01 teleconf. on preliminary injunction motion filed by Cordis. (rld) (Entered: 03/21/2001)
- 03/22/2001 1073 Letter to Judge Robinson from Mr. Balick in opposition to AVE's request in DI 1039 re sealing of certain documents. (originally file stamped on 3/20/01). (rld) Modified on 03/23/2001 (Entered: 03/23/2001)
- 03/22/2001 1074 Letter to Judge Robinson from Mr. Wright enclosing proposed order for BSC's Motion for JMOL or for a new trial, which was accidentally omitted; also enclosing new cover page for the Opening Brief in Support of same motion, for substitution. (rld) (Entered: 03/23/2001)
- 03/28/2001 1075 Letter to Judge Robinson from Mr. Rogowski re Court's placement of certain exhibits and testimony under seal, as set forth in letter of 1/29/01. (rld) (Entered: 03/28/2001)
- 04/16/2001 1076 STIPULATION with proposed order (rld) (Entered: 04/18/2001)
- 04/16/2001 1077 Answering brief by Cordis Corporation, Expandable Grafts in opposition to [1068-1] trial brief, [1067-1] trial brief; reply briefs due 4/27/01; FILED BY INCORPORATION IN CIVIL ACTION #'s 97-700 & 98-19. (rld) (Entered: 04/19/2001)
- 04/17/2001 1078 Answer Brief Filed by Medtronic AVE, Inc. In Opposition to [1069-1] motion for Judgment as a Matter of Law - Reply Brief due 5/8/01, [1069-2] motion for New Trial - Reply Brief due 5/8/01 (rld) (Entered: 04/19/2001)
- 04/17/2001 1079 Answer Brief Filed by Medtronic AVE, Inc. In Opposition to [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad - Reply Brief due 5/8/01 (rld) (Entered: 04/19/2001)
- 04/17/2001 1080 Answer Brief Filed by Cordis Corporation [1063-1] motion for Judgment as a Matter of Law re infringement claims - Reply Brief due 5/8/01---SEALED--- (rld) Modified on 04/23/2001 (Entered: 04/23/2001)
- 04/17/2001 1081 Answer Brief Filed by Cordis Corporation In Opposition to [1065-1] motion for New Trial - Reply Brief due 5/8/01---SEALED--- (rld) (Entered: 04/23/2001)
- 04/18/2001 1082 Answer Brief Filed by Cordis Corporation In Opposition to [1069-1] motion for Judgment as a Matter of Law - Reply Brief due 5/8/01, [1069-2] motion for New Trial - Reply Brief due 5/8/01 (rld) (Entered: 04/23/2001)
- 04/18/2001 1083 Answer Brief Filed by Boston Scientific, Scimed Life Systems In Opposition to [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent - Reply Brief due 5/8/01 (rld) (Entered: 04/23/2001)
- 04/19/2001 1084 MOTION by Cordis Corporation for entry of orders of judgment including for Permanent Injunctions agst. Medtronic AVE, Inc., Boston Scientific Corp., and Scimed Life Systems, Inc.; Answer Briefs due 5/16/01 re: [1084-1] motion, Answer Brief due 5/16/01 re: [1084-2] motion; Motion filed in civil case #'s 97-700, 98-19, and 98-197 via incorporation, therefore no docket number is assigned to the motion in these three cases. (rld) (Entered: 04/24/2001)
- 04/19/2001 1085 Opening Brief Filed by Cordis Corporation [1084-1] motion for entry of orders of judgment - Answer Brief due 5/16/01, [1084-2] motion for Permanent Injunctions - Answer Brief due 5/16/01; opening brief filed in civil case #'s 97-700, 98-19, and 98-197 via incorporation; therefore no docket number is assigned to the opening brief in these three cases---SEALED--- (rld) Modified on 04/24/2001 (Entered: 04/24/2001)
- 04/20/2001 -- So Ordered granting [1076-1] stipulation reset Memorandum in Opposition Deadline by Cordis to 4/16/01 re: [1068-1] trial brief, to 4/16/01 re: [1067-1] trial brief , reset Memorandum in Support Deadline by defts. to 4/30/01 re: [1068-1] trial brief, to 4/30/01 re: [1067-1] trial brief (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/23/2001)
- 04/24/2001 1086 Letter to Clerk DiMeo from Mr. Balick enclosing revised cover page for DI 1077 deleting case caption for C.A. #98-19. (rld) (Entered: 04/25/2001)
- 05/03/2001 1087 STIPULATION re Post Trial Briefing Schedule of defts. to file reply briefs on inequitable conduct; with proposed order; filed in Civil Cases 97-700; 98-19 ; and 98-197 via incorporation by reference; see DI 1088 entry for details. (rld) (Entered: 05/04/2001)
- 05/03/2001 1088 NOTICE of filing via incorporation by reference by Boston Scientific, Scimed Life Systems re stipulated post trial briefing schedule, DI 1087, in civil cases 97-700; 98-19; and 98-197. (rld) (Entered: 05/04/2001)
- 05/07/2001 -- So Ordered granting [1087-1] stipulation reset Memorandum in Support Deadline to 5/7/01 re: [1067-1] trial brief (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 05/11/2001)

05/08/2001	1089	MEMORANDUM by Medtronic AVE, Inc. in support of [1067-1] trial brief re inequitable conduct (rld) (Entered: 05/11/2001)
05/08/2001	1090	MEMORANDUM by Boston Scientific, Scimed Life Systems in support of [1068-1] trial brief re patents in suit are unenforceable. (rld) (Entered: 05/11/2001)
05/08/2001	1091	STIPULATION for extension of time to file reply briefs on JMOL and new trial motions; with proposed order (rld) (Entered: 05/11/2001)
05/11/2001	--	So Ordered granting [1091-1] stipulation; reply briefs on JMOL and New Trial Motions shall be filed on or before 5/11/01. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 05/11/2001)
05/11/2001	1092	Reply Brief Filed by Medtronic AVE, Inc. [1063-1] motion for Judgment as a Matter of Law re infringement claims---SEALED--- (rld) (Entered: 05/15/2001)
05/11/2001	1093	Reply Brief Filed by Cordis Corporation [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent (rld) (Entered: 05/15/2001)
05/11/2001	1094	Reply Brief Filed by Medtronic AVE, Inc. [1065-1] motion for New Trial---SEALED--- (rld) (Entered: 05/15/2001)
05/11/2001	1095	Reply Brief Filed by Boston Scientific, Scimed Life Systems [1069-1] motion for Judgment as a Matter of Law, [1069-2] motion for New Trial (rld) (Entered: 05/15/2001)
05/11/2001	1096	Reply Brief Filed by Cordis Corporation [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad---SEALED--- (rld) (Entered: 05/15/2001)
05/16/2001	1097	Answer Brief Filed by Boston Scientific, Scimed Life Systems [1084-1] motion for entry of orders of judgment - Reply Brief due 5/23/01, [1084-2] motion for Permanent Injunctions - Reply Brief due 5/23/01---SEALED--- (rld) (Entered: 05/18/2001)
05/16/2001	1098	Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [1097-1] answer brief---SEALED--- (rld) (Entered: 05/18/2001)
05/16/2001	1099	Answer Brief Filed by Medtronic AVE, Inc. [1084-1] motion for entry of orders of judgment - Reply Brief due 5/23/01 ---SEALED--- (rld) (Entered: 05/18/2001)
05/17/2001	1100	Declaration of Gregory K. Bell, PhD. (rld) (Entered: 05/18/2001)
05/17/2001	1101	Letter to Judge Robinson from J. Ingersoll req. oral argument on parties' motions for jmol and/or new trial as briefing is complete. (rld) (Entered: 05/18/2001)
05/31/2001	1102	STIPULATION to extend Cordis' relpy brief deadlines in support of its Motion for Entry of Orders of Jgm., Including Permanent Injunctions (DI 1084); with proposed order (rld) (Entered: 06/05/2001)
06/01/2001	1103	Combined Reply Brief Filed by Cordis Corporation in Support of [1084-2] motion for Permanent Injunctions; and in opposition to AVE and BSC's request that the injunction be stayed pending appeal---SEALED--- (rld) Modified on 06/11/2001 (Entered: 06/11/2001)
06/06/2001	--	So Ordered granting [1102-1] stipulation reset Reply Brief Deadline to 6/1/01 re: [1084-1] motion for entry of orders of judgment, 6/1/01 re: [1084-2] motion for Permanent Injunctions (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 06/06/2001)
06/25/2001	1104	ORDER, Motion Hearing set for 10:00 7/26/01 for [1084-1] motion for entry of orders of judgment, [1084-2] motion for Permanent Injunctions, [1069-1] motion for Judgment as a Matter of Law, [1069-2] motion for New Trial, [1065-1] motion for New Trial, [1063-1] motion for Judgment as a Matter of Law re infringement claims, [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 07/09/2001)
06/26/2001	--	Deadline updated; Motion Hearing set for 10:00 7/26/01 for all post trial motions: [1084-1] motion for entry of orders of judgment, [1084-2] motion for Permanent Injunctions, [1069-1] motion for Judgment as a Matter of Law, [1069-2] motion for New Trial, [1065-1] motion for New Trial, [1063-1] motion for Judgment as a Matter of Law re infringement claims, [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent (rld) (Entered: 06/26/2001)
07/23/2001	1105	Letter to Judge Robinson from J. Ingersoll re recent decision of the Fed. Circuit in Mycogen Plant Science, Inc. v Monsanto Co. (rld) (Entered: 07/24/2001)

07/23/2001 1106 Letter to Judge Robinson from J. Ingersoll re schedule for post-trial motions to be argued on 7/26/01. (rld) (Entered: 07/24/2001)

07/26/2001 -- Motion hearing re: [1084-1] motion for entry of orders of judgment Motion hearing held, [1084-2] motion for Permanent Injunctions, [1069-1] motion for Judgment as a Matter of Law, [1069-2] motion for New Trial, [1065-1] motion for New Trial, [1063-1] motion for Judgment as a Matter of Law re infringement claims, [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent; Judge ROBINSON presiding; crt. rptr. V. Gunning present; held jointly with oral argument in CA No. 98-197. (rld) Modified on 07/27/2001 (Entered: 07/27/2001)

07/27/2001 1107 TRANSCRIPT filed [0-0] motion hearing for dates of 7/26/01; Judge Robinson presiding; post-trial motions; hearing held jointly with motion hearing in CA No. 98-197; crt. rptr. V. Gunning present. (rld) (Entered: 07/27/2001)

07/27/2001 1108 Letter to Judge Robinson from S. Margolin responding to BSC's discussion on the Mycogen case. (rld) (Entered: 07/30/2001)

07/31/2001 1109 Letter to Judge Robinson from C. Wright responding to Cordis' letter of 7/27/01 re Mycogen and Haynes cases. (rld) (Entered: 07/31/2001)

08/02/2001 1110 Letter to Judge Robinson from S. Balick re discussion of Comark. (rld) (Entered: 08/03/2001)

08/03/2001 1111 Letter to Judge Robinson from P. Crawford responding to two questions posed by Judge during 7/26/01 oral argument re (1) AVE's JMOL on Standing is not affected by Mentor; and (2) the '665 Patent Specification describes a "bent wire" embodiment of the woven wire mesh stent. (rld) (Entered: 08/06/2001)

08/10/2001 1112 Letter from Steven J. Balick to Judge Robinson highlighting the Court's comments during the 7/26/01 oral argument with regard to the Federal Circuit's recent decision in Mentor H/S, Inc. v. Medical Device Alliance, Inc., and further responding to AVE 8/3/01 letter (ljj) (Entered: 08/13/2001)

08/20/2001 1113 Letter to Judge Robinson from J. Ingersoll responding to Cordis' 8/10/01 letter to the Court re comment "BSC has not even tried to show prejudice" with respect to the standing defect relied upon by AVE (rld) (Entered: 08/21/2001)

08/22/2001 1114 STIPULATION for US Patent '303 (defts.' exhibit #11759-A) to be returned to defts. BSC and Scimed and the attached copy of the Patent be substituted. (rld) (Entered: 08/22/2001)

08/23/2001 -- So Ordered granting [1114-1] stipulation; defts.' Exhibit #11759-A shall be returned to defts. BSC and Scimed; and a copy of the exhibit shall be substituted in Court's file. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 08/23/2001)

08/23/2001 -- Original of Defts.' Exhibit #11759-A returned to Josy Ingersoll on 8/23/01 prior to start of jury trial in 99-904-SLR. (rld) (Entered: 08/23/2001)

01/30/2002 1119 Letter to Judge Robinson from J. Ingersoll re recent decision of the Fed.Cir. in Intermatic Inc. v. The Lamson & Sessions Co. (rld) (Entered: 01/30/2002)

02/08/2002 1120 Letter to Judge Robinson from S. Balick responding to Ingersoll's letter of 1/30/02 re recent Fed.Cir. decision. (rld) (Entered: 02/11/2002)

02/13/2002 1121 Letter to Judge Robinson from P. Rogowski responding to Ingersoll's letter of 1/30/02 and Balick's letter of 2/8/02 re Fed.Cir. recent decision in Intermatic. (rld) (Entered: 02/14/2002)

02/15/2002 1122 Letter to Judge Robinson from J. Ingersoll req. court not consider points unrelated to Intermatic case made in Cordis' letter of 2/8/02. (rld) (Entered: 02/15/2002)

02/25/2002 1123 Letter to Judge Robinson from S. Balick responding to AVE's 2/13/02 letter and BSC's 2/14/02 letter in this action. (rld) (Entered: 02/26/2002)

03/01/2002 1124 Letter to Judge Robinson from J. Ingersoll responding to Cordis's letter of 2/25/02 re Intermatic and Comark cases. (rld) (Entered: 03/04/2002)

03/08/2002 1125 Letter to Judge Robinson from S. Balick re recent decision in Tate Access Floors, Inc. v. Interface Architectural Resources, Inc. (rld) (Entered: 03/11/2002)

03/12/2002 1126 Letter to Judge Robinson from J. Ingersoll responding to S. Balick's letter of 3/8/02 re recent case decision. (rld) (Entered: 03/13/2002)

03/28/2002 1127 OPINION (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/28/2002)

03/28/2002 1128 ORDER denying [1084-1] motion for entry of orders of judgment, denying [1084-2] motion for Permanent Injunctions, (DI#1082 is denied as to AVE and denied without prejudice to renew as to BSC upon conclusion of the new BSC damages trial); denying [1069-1] motion for Judgment

as a Matter of Law, granting in part, denying in part [1069-2] motion for New Trial, mooting [1065-1] motion for New Trial, granting [1063-1] motion for Judgment as a Matter of Law re infringement claims, mooting [1061-1] motion for New Damages Trial agst. AVE on a "reasonable royalty" for infringing stents made in the US for sale abroad, denying [1059-1] motion for Judgment as a Matter of Law agst. Boston Scientific on Claim 44 of the palmaz '762 patent & Claim 25 of the Fischell '370 Patent, granting in part, denying in part [992-1] motion for Judgment as a Matter of Law that certain claim terms are not entitled to any scope of equivalents, granting [0-0] motion for Judgment as a Matter of Law (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 03/28/2002)

- 04/10/2002 1129 STIPULATION Amending Protective Order; with proposed order (rld) (Entered: 04/11/2002)
- 04/11/2002 1130 MOTION by Boston Scientific, Scimed Life Systems for Reconsideration of [1128-1] order Answer Brief due 4/25/02 re: [1130-1] motion (rld) (Entered: 04/15/2002)
- 04/11/2002 1131 MOTION by Medtronic AVE, Inc. for Reconsideration of [1128-1] order Answer Brief due 4/25/02 re: [1131-1] motion (rld) (Entered: 04/15/2002)
- 04/11/2002 1132 Renewed MOTION by Cordis Corporation with Proposed Order for entry of jgm. dismissing its claims agst. AVE on the "332 Patent Answer Brief due 4/25/02 re: [1132-1] motion (rld) (Entered: 04/16/2002)
- 04/11/2002 1133 MOTION by Cordis Corporation with Proposed Order for Reconsideration of [1128-1] order re denial of an injun. agst. BSC with leave to renew , or, in the alternative for an order under Fed. R.Civ.P. 54(b) directing the entry of jgm. on Cordis' claims agst. AVE Answer Brief due 4/25/02 re: [1133-1] motion, Answer Brief due 4/25/02 re: [1133-2] motion (rld) (Entered: 04/16/2002)
- 04/11/2002 1134 Opening Brief Filed by Cordis Corporation [1133-1] motion for Reconsideration of [1128-1] order re denial of an injun. agst. BSC with leave to renew, [1133-2] motion for an order under Fed. R.Civ.P. 54(b) directing the entry of jgm. on Cordis' claims agst. AVE (rld) (Entered: 04/16/2002)
- 04/11/2002 1135 MOTION by Cordis Corporation with Proposed Order for Reconsideration of [1128-1] order re grant of a new BSC Damages Trial Answer Brief due 4/25/02 re: [1135-1] motion (rld) (Entered: 04/16/2002)
- 04/11/2002 1136 Opening Brief Filed by Cordis Corporation [1135-1] motion for Reconsideration of [1128-1] order re grant of a new BSC Damages Trial (rld) (Entered: 04/16/2002)
- 04/12/2002 -- So Ordered granting [1129-1] stipulation amending the scheduling order to add the law firm of Robins, Kaplan, Miller & Ciresi, LLP as outside cnsl. for Medtronic AVE, Inc. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/12/2002)
- 04/12/2002 1137 Letter to F. Cottrell, III, Esq. from P. Rogowski re objection of Medtronic to permitting ACS representatives access to trial exhibits that Medtronic req. Court to place under seal; ACS is no longer a party to the protective order in this case. (rld) (Entered: 04/16/2002)
- 04/18/2002 1138 Letter to Judge Robinson from F. Cottrell, III, re need for Advanced Cardio. Sys. to inspect and photograph certain physical trial exhibits with the Court's possession. (rld) (Entered: 04/19/2002)
- 04/23/2002 1139 Answer Brief Filed by Medtronic AVE, Inc. [1130-1] motion for Reconsideration of [1128-1] order - Reply Brief due 4/30/02 (rld) (Entered: 04/24/2002)
- 04/25/2002 1140 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1135-1] motion for Reconsideration of [1128-1] order re grant of a new BSC Damages Trial - Reply Brief due 5/2/02 (rld) (Entered: 04/26/2002)
- 04/25/2002 1141 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1133-1] motion for Reconsideration of [1128-1] order re denial of an injun. agst. BSC with leave to renew - Reply Brief due 5/2/02 (rld) (Entered: 04/26/2002)
- 04/25/2002 1142 Answer Brief Filed by Medtronic AVE, Inc. [1133-1] motion for Reconsideration of [1128-1] order re denial of an injun. agst. BSC with leave to renew - Reply Brief due 5/2/02 (rld) (Entered: 04/26/2002)
- 04/25/2002 1143 Answer Brief Filed by Medtronic AVE, Inc. [1132-1] motion for entry of jgm. dismissing its claims agst. AVE on the "332 Patent - Reply Brief due 5/2/02 (rld) (Entered: 04/26/2002)
- 04/25/2002 1144 STIPULATION to extend time for Cordis to respond to DI#1131; with proposed order (rld) (Entered: 04/26/2002)
- 04/25/2002 1145 STIPULATION to extend time for Cordis to respond to DI#1130; with proposed order (rld) (Entered: 04/26/2002)
- 04/26/2002 1146 Letter to Judge Robinson from F. Cottrell, III, requesting certain Cordis Exhibits to examine

- and photograph on behalf of Advanced Cardio. Systems, Inc. (rld) (Entered: 04/26/2002)
- 04/26/2002 1147 Answer Brief Filed by Cordis Corporation [1130-1] motion for Reconsideration of [1128-1] order - Reply Brief due 5/3/02 (rld) (Entered: 04/29/2002)
- 04/29/2002 -- So Ordered granting [1144-1] stipulation reset Answer Brief Deadline to 5/3/02 re: [1131-1] motion for Reconsideration of [1128-1] order (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/29/2002)
- 04/29/2002 -- So Ordered granting [1145-1] stipulation reset Answer Brief Deadline to 4/26/02 re: [1130-1] motion for Reconsideration of [1128-1] order (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/29/2002)
- 05/02/2002 1148 Reply Brief Filed by Cordis Corporation [1132-1] motion for entry of jgm. dismissing its claims agst. AVE on the "332 Patent (rld) (Entered: 05/07/2002)
- 05/02/2002 1149 Reply Brief Filed by Cordis Corporation [1133-2] motion for an order under Fed. R.Civ.P. 54(b) directing the entry of jgm. on Cordis' claims agst. AVE (rld) (Entered: 05/07/2002)
- 05/03/2002 1150 Answer Brief Filed by Cordis Corporation [1131-1] motion for Reconsideration of [1128-1] order - Reply Brief due 5/10/02 (rld) (Entered: 05/07/2002)
- 05/03/2002 1151 Letter to Judge Robinson from J. Ingersoll requesting Court to consider this brief letter directed solely to Cordis's new waiver argument made in Cordis's Answering brief in opposition to BSC's Motion for Reconsideration of Its Motion for a New Trial on the "substantially uniform thickness" limitation. (rld) (Entered: 05/07/2002)
- 05/10/2002 1152 Reply Brief Filed by Medtronic AVE, Inc. [1131-1] motion for Reconsideration of [1128-1] order (rld) (Entered: 05/13/2002)
- 05/15/2002 1153 MEMORANDUM ORDER denying [1135-1] motion for Reconsideration of [1128-1] order re grant of a new BSC Damages Trial, denying [1133-1] motion for Reconsideration of [1128-1] order re denial of an injun. agst. BSC with leave to renew, granting [1133-2] motion for an order under Fed. R.Civ.P. 54(b) directing the entry of jgm. on Cordis' claims agst. AVE, granting [1132-1] motion for entry of jgm. dismissing its claims agst. AVE on the "332 Patent, granting in part, denying in part [1131-1] motion for Reconsideration of [1128-1] order (granted as to a new trial on infringement of "substantially uniform thickness" limitation IN THE EVENT that the Federal Circuit reverses the court's grant of jgm. as a matter of law; denied as to all other grounds); , granting [1130-1] motion for Reconsideration of [1128-1] order; the retrial of infringement of the "substantially uniform thickness" limitation and damages as to BSC is STAYED pending the resolution of the appeal of issues concerning AVE by the Federal Circuit; SEE order for further details (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 05/15/2002)
- 05/15/2002 1154 JUDGMENT for Medtronic AVE, Inc. against Cordis Corporation, Expandable Grafts with respect to AVE's Infringement of claims 23, 51, and 54 of the U.S. Patent '762, and of claims 1 and 3 fo the U.S. Patent '984; JGM. is entered in favor of Cordis and agst. AVE with respect to the validity of claims 23, 51, and 54 fo the '762 Patent, and of claims 1 and 3 of the '984 patent, and with respect to the enforceability of the '762 and '984 patents; JGM. is entered in favor of AVE and agst. Cordis with respect to AVE's infringement of claims 1, 3, and 5 of the U.S. Patent '332 and of claims of U.S. Patent '417; it is further ordered that Cordis shall pay AVE its cost incurred in defending Cordis' claims based on the '762, '984, '332, and '417 patents; there is no just cause for delay in entering jgm. in favor of AVE. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) Modified on 05/17/2002 (Entered: 05/15/2002)
- 06/13/2002 1155 NOTICE OF APPEAL by Cordis Corporation [1154-1] judgment order, [1153-1] order . Time: 4:06 Fee Status: unpaid Appeal record due on 7/15/02 (rld) (Entered: 06/14/2002)
- 06/13/2002 -- RECEIPT # 132550 in the amt. of \$105.00 for appeal by pltf. (Ashby & Geddes). (rld) (Entered: 06/14/2002)
- 06/18/2002 -- Notice of appeal and certified copy of docket to Federal Circuit: [1155-1] appeal by Cordis Corporation (els) (Entered: 06/18/2002)
- 06/18/2002 -- copies to the Honorable Sue L. Robinson, Steven J. Balick, Patricia Smink Rogowski and Josy W. Ingersoll. (els) (Entered: 06/18/2002)
- 06/25/2002 1156 Letter to Clerk from S. Balick enclosing transcript purchase order in connection with appeal. (rld) (Entered: 06/25/2002)
- 06/25/2002 1157 Transcript requested [1155-1] appeal by Cordis Corporation; already on file. (rld) (Entered: 06/25/2002)
- 06/26/2002 1158 NOTICE OF APPEAL by Medtronic AVE, Inc. [1154-1] judgment order, [1128-1] order, [1127-1] order . Time: 4:22 Fee Status: unpaid Appeal record due on 7/26/02 (rld) (Entered: 07/01/2002)

06/27/2002 -- RECEIPT # 132617 for \$105.00 (Connolly Bove) (rld) (Entered: 07/02/2002)

06/28/2002 -- NOTICE of Docketing ROA from FEDERAL CIRCUIT Re: [1155-1] appeal by Cordis Corporation FED. CIR. NUMBER: 02-1457 (rld) (Entered: 07/03/2002)

07/03/2002 1159 Letter to Clerk from P. Rogowski enclosing DI #1160. (rld) (Entered: 07/03/2002)

07/03/2002 1160 Transcript requested [1158-1] appeal by Medtronic AVE, Inc.; Already on file. (rld) (Entered: 07/03/2002)

07/08/2002 -- Certified and transmitted certified list of docket entries in lieu of record on appeal to Federal Court of Appeals: [1155-1] appeal by Cordis Corporation; exit certified copies of docket entries indicating record complete for appeal purposes. (els) Modified on 07/08/2002 (Entered: 07/08/2002)

07/09/2002 -- Notice of appeal and certified copy of docket to Federal Circuit: [1158-1] appeal by Medtronic AVE, Inc. (els) (Entered: 07/09/2002)

07/09/2002 -- copies to the Honorable Sue L. Robinson, Court Reporters, Steven J. Balick, Patricia Smink Rogowski and Josy W. Ingersoll. (els) (Entered: 07/09/2002)

07/15/2002 -- NOTICE of Docketing ROA from FEDERAL CIRCUIT Re: [1158-1] appeal by Medtronic AVE, Inc. FEDERAL CIRCUIT NUMBER: 02-1481 (rld) (Entered: 07/16/2002)

01/22/2003 1162 Letter to Judge Robinson from S. Balick requesting that the Court temporarily release 2 physical trial exhibits that were introduced into evidence; Cordis needs those exhibits for use during an arbitration with Advanced Cardiovascular Systems, Inc. that begins next week in Chicago; will return the exhibits as soon as the arbitration concludes on 2/7/03; two exhibits are PX 3986 and PX 3987 (fmt) (Entered: 01/23/2003)

02/12/2003 1163 Letter to Judge Robinson from S. Balick returning two physical exhibits (PX 3986 and PX 3987). (rld) (Entered: 02/14/2003)

10/10/2003 1164 Letter to Judge Robinson from K. Jacobs Loudon informing the court that the Federal Circuit denied AVE's Petition for Rehearing and Rehearing En Banc in the appeal on 10/3/03; appellate mandate is scheduled to issue on 10/10/03; AVE requests a conf. to discuss scheduling; AVE will file a petition for a writ of certiorari in U.S. Supreme Court (fmt) (Entered: 10/10/2003)

10/14/2003 1165 Letter to Judge Robinson from S. Balick responding to D.I. # 1164 (fmt) (Entered: 10/15/2003)

10/14/2003 1166 MOTION by Cordis Corporation with Proposed Order for entry of Judgment agst. AVE Answer Brief due 10/28/03 re: [1166-1] motion (rld) (Entered: 10/16/2003)

10/14/2003 1167 Opening Brief Filed by Cordis Corporation [1166-1] motion for entry of Judgment agst. AVE (rld) (Entered: 10/16/2003)

10/14/2003 1168 MOTION by Cordis Corporation with Proposed Order to Revise and Vacate the grant of a new trial [1153-1] order , and for entry of Judgment agst. BSC Answer Brief due 10/28/03 re: [1168-1] motion, Answer Brief due 10/28/03 re: [1168-2] motion (rld) (Entered: 10/16/2003)

10/14/2003 1169 Opening Brief Filed by Cordis Corporation [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order, [1168-2] motion for entry of Judgment agst. BSC (rld) (Entered: 10/16/2003)

10/14/2003 1170 JUDGMENT OF USCA (certified copy) Re: [1158-1] appeal, [1155-1] appeal; reversed and remanded; issued as a mandate on 10/10/03 (rld) (Entered: 10/16/2003)

10/14/2003 1171 OPINION OF USCA (certified copy) Re: appeals (rld) (Entered: 10/16/2003)

10/15/2003 1175 NOTICE of Substitution of Cnsl. (filed without original signature for Connolly Bove; awaiting cnsl.'s corrective filing before making the actual atty. sub. for Medtronic). (rld) (Entered: 10/21/2003)

10/17/2003 1172 Letter to Deputy Clerk DiMeo from S. Balick re D.I. #s 1167 and 1169; enclosing original signature pages to be substituted into D.I. #s 1167 and 1169 (fmt) (Entered: 10/20/2003)

10/17/2003 1173 STIPULATION re briefing schedule for Cordis Corporation's Motion for Entry of Jgm.; with proposed order (fmt) (Entered: 10/20/2003)

10/21/2003 1174 Notice of Deficiency from the court to P. Bangle of Morris Nichols, Arsht & Tunnell for filing of Ntc. of Substitution of Cnsl. for Medtronic which lacks the signature of Medtronic's current cnsl. P. Rogowski-Connolly Bove (rld) (Entered: 10/21/2003)

10/22/2003 -- So Ordered granting [1173-1] stipulation reset Answer Brief Deadline to 11/12/03 re: [1166-1] motion for entry of Judgment agst. AVE , and reset Reply Brief Deadline to 12/2/03 re: [1166-1] motion for entry of Judgment agst. AVE (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/22/2003)

10/27/2003 1176 STIPULATION to extend briefing schedule for Cordis' motion to revise and vacate the grant of a new trial with proposed order (rld) (Entered: 10/28/2003)

10/29/2003 -- So Ordered granting [1176-1] stipulation reset Answer Brief Deadline to 11/12/03 re: [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order , and set Reply Brief Deadline to 12/2/03 re: [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/29/2003)

10/31/2003 1177 **Terminated attorney Patricia Smink Rogowski for Medtronic AVE, Inc., attorney Patricia Smink Rogowski for Medtronic AVE, Inc., attorney Patricia Smink Rogowski for Medtronic AVE, Inc., attorney Patricia Smink Rogowski for Arterial Vascular Notice of attorney appearance for Medtronic AVE, Inc., Medtronic AVE, Inc., Medtronic AVE, Inc. by Philip Henry Bangle; and note name change for Medtronic AVE to Medtronic Vascular, Inc. (rld) (Entered: 10/31/2003)

11/12/2003 1178 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order - Reply Brief due 11/19/03, [1168-2] motion for entry of Judgment agst. BSC - Reply Brief due 11/19/03 (rld) (Entered: 11/12/2003)

11/12/2003 1179 SEALED Answer Brief Filed by Medtronic Vascular [1166-1] motion for entry of Judgment agst. AVE - Reply Brief due 12/2/03 (rld) (Entered: 11/13/2003)

11/13/2003 1180 Letter to Judge Robinson from J. Ingersoll requesting the Court to grant oral argument on Cordis' Motion to Revise and Vacate the Grant of a New Trial and For Entry of Jgm Against BSC; briefing on motion is scheduled to be completed on 12/2/03 (fmt) Modified on 11/14/2003 (Entered: 11/14/2003)

11/14/2003 1181 Letter to Judge Robinson from K. Jacobs Loudon requesting oral argument on Cordis' Motion for Entry of Jgm. against AVE (D.I. # 1166); briefing on Motion is scheduled to be completed on 12/2/03 (fmt) (Entered: 11/17/2003)

11/18/2003 1182 Letter to Judge Robinson from J. Day re oral argument (fmt) (Entered: 11/19/2003)

11/19/2003 1183 Letter to Judge Robinson from K. Jacobs Loudon responding to Cordis' 11/18/03 letter (D.I. # 1182) (fmt) (Entered: 11/20/2003)

12/03/2003 1184 Reply Brief Filed by Cordis Corporation [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order, [1168-2] motion for entry of Judgment agst. BSC (fmt) (Entered: 12/04/2003)

12/03/2003 1185 Reply Brief Filed by Cordis Corporation [1166-1] motion for entry of Judgment agst. AVE (fmt) (Entered: 12/04/2003)

12/09/2003 1186 Letter to Judge Robinson from S. Balick re Cordis' consent to dfts' request to file a surreply in opposition to Cordis' motions to enter jgm. against AVE and BSC in C.A. No. 97-550-SLR (D.I. #s 1166 and 1168); dfts will file a stipulated order; all parties have requested oral argument on these motions; requesting argument be scheduled before Christmas; also request that a scheduling conf. in related case 00-886-SLR be held at the same time (fmt) (Entered: 12/09/2003)

12/09/2003 1187 STIPULATION re surreply briefs; with proposed order (fmt) (Entered: 12/10/2003)

12/10/2003 -- So Ordered granting [1187-1] stipulation Medtronic Vascular may file a surreply brief in further oppos. to Cordis' motion for entry of jgm. agst. AVE in Ca NO. 97-550 and 97-700-SLR by 12/15/03; BSC and Scimed may file a surreply brief in further oppos. to Cordis' motion to revise and vacate the grant of a new trial and for entry of jgm. agst. BSC in CA No. 97-550, 98-19, and 98-197 by 12/15/03 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 12/11/2003)

12/15/2003 1188 SURReply Brief Filed by Medtronic Vascular [1166-1] motion for entry of Judgment agst. AVE (fmt) (Entered: 12/19/2003)

12/15/2003 1189 Declaration of Henry R. Piehler in support of D.I. # 1188 (fmt) (Entered: 12/19/2003)

12/15/2003 1190 SEALED Declaration of Jeffrey W. Allen (fmt) (Entered: 12/19/2003)

12/15/2003 1191 SEALED SURReply Brief Filed by Boston Scientific [1168-2] motion for entry of Judgment agst. BSC (fmt) Modified on 12/19/2003 (Entered: 12/19/2003)

12/23/2003 1192 Letter to Judge Robinson from K. Jacobs Loudon re teleconference on 1/9/04 at 10:00 a.m. (fmt) (Entered: 12/29/2003)

12/29/2003 1193 Letter to Judge Robinson from S. Balick writing on behalf of Cordis to advise the Court that are available for a conference on 1/9 at 10:00 a.m. (fmt) (Entered: 12/29/2003)

12/30/2003 -- Deadline updated; set Telephone Conference for 10:00 1/9/04 set per D.I. 1164 re scheduling issues (rld) (Entered: 12/30/2003)

12/30/2003 1194 Letter to Judge Robinson from C. Douglas Wright responding to D.I. # 1193 (fmt) (Entered: 12/30/2003)

01/05/2004)

01/05/2004 1195 Letter to Judge Robinson from K. Jacobs Loudon responding to Cordis' 12/29/03 letter in which Cordis requests that oral argument on its motion for entry of jgm against Vascular proceed on 1/9/04; further respond to Boston Scientific's 12/30/03 on the same topic (fmt) (Entered: 01/05/2004)

01/05/2004 -- Deadline updated; Motion Hearing set for 10:00 1/9/04 for [1166-1] motion for entry of Judgment agst. AVE to be held in conjunction with scheduling conf. previously set for this date. (rld) (Entered: 01/05/2004)

01/29/2004 1196 ORDER effective immediately the court will not consider applications and requests submitted by letter or in a form other than a motion, absent express approval by the court; no telephone calls are to be made to chambers; emergency matters should be emailed to the court at the address provided; no attachments shall be submitted in connection with said emails. (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 01/29/2004)

01/29/2004 1197 MOTION by Cordis Corporation for Oral Argument Answer Brief due 2/12/04 re: [1197-1] motion (fmt) (Entered: 01/30/2004)

02/05/2004 1198 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1197-1] motion for Oral Argument - Reply Brief due 2/12/04 (fmt) (Entered: 02/06/2004)

02/10/2004 1199 MOTION with Proposed Order by LPL Systems, Inc. for Leave for an Order Allowing the Production of Documents in Related California Litigation Answer Brief due 2/24/04 re: [1199-1] motion (fmt) (Entered: 02/11/2004)

02/10/2004 1200 Memorandum in Support Filed by LPL Systems, Inc. [1199-1] motion for Leave for an Order Allowing the Production of Documents in Related California Litigation (fmt) (Entered: 02/11/2004)

02/17/2004 1201 MEMORANDUM ORDER denying [1168-1] motion to Revise and Vacate the grant of a new trial [1153-1] order, denying [1168-2] motion for entry of Judgment agst. BSC, denying [1166-1] motion for entry of Judgment agst. AVE, set in-person Status Conference for 2:00 3/22/04 on or before 3/15/04 parties will submit memoranda of law indicating what, if any, issues are left to be resolved in light of court's claim construction; See order for further details (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 02/17/2004)

02/17/2004 -- Mooting [1197-1] motion for Oral Argument per court's order of 2/17/04 (D.I. 1201) (rld) (Entered: 06/17/2004)

02/23/2004 1202 Answer Brief Filed by Kenyon & Kenyon [1199-1] motion for Leave for an Order Allowing the Production of Documents in Related California Litigation - Reply Brief due 3/1/04 (fmt) Modified on 02/25/2004 (Entered: 02/25/2004)

02/26/2004 1203 Answer Brief Filed by Cordis Corporation [1199-1] motion for Leave for an Order Allowing the Production of Documents in Related California Litigation - Reply Brief due 3/4/04 (fmt) (Entered: 02/27/2004)

03/15/2004 1204 SEALED MEMORANDUM of Law Submitted Pursuant to the Court's February 17, 2004 Memorandum Order by Medtronic Vascular (fmt) (Entered: 03/16/2004)

03/15/2004 1205 MEMORANDUM by Cordis Corporation on any Remaining Issues Under the Court's Claim Construction Concerning Cordis' Claims against BSC (fmt) (Entered: 03/16/2004)

03/15/2004 1206 MEMORANDUM On Any Remaining Issues Under the Court's Claim Construction Concerning Cordis' Claims Against AVE by Cordis Corporation (fmt) (Entered: 03/16/2004)

03/15/2004 1207 Declaration of Creighton G. Hoffman in support of D.I. # 1205 (fmt) (Entered: 03/16/2004)

03/15/2004 1208 Notice of Deficiency from the court to plaintiff Cordis Corporation; D.I. # 1207 has no original signature (fmt) (Entered: 03/16/2004)

03/15/2004 1209 Declaration of Creighton G. Hoffman in support of Cordis' Memorandum On Any Remaining Issues Under the Court's Claim Construction Concerning Cordis' Claims Against AVE (D.I. # 1206) (fmt) Modified on 03/16/2004 (Entered: 03/16/2004)

03/15/2004 1210 Notice of Deficiency from the court to plaintiff Cordis Corporation; no original signature on D.I. # 1209 (fmt) (Entered: 03/16/2004)

03/15/2004 1211 MEMORANDUM by Boston Scientific, Scimed Life Systems on the Outstanding Issues that Remain to be Tried (fmt) (Entered: 03/16/2004)

03/16/2004 1212 Letter to Deputy Clerk Tassone from P. Bangle re Memorandum of Law Pursuant to The Court's 2/17/04 Memorandum Order; a few of the exhibits attached were inadvertently placed out of order; enclosing exhibits which replace the ones filed; also enclosed in the replacement set of exhibits is the original Declaration of Jeffrey W. Allen (fmt) (Entered: 03/17/2004)

03/17/2004 1213 Letter to Deputy Clerk DiMeo from J. Day re D.I. #s 1207 and 1209; facsimile versions of both were filed with the Court; enclosed are the executed, original versions of each declaration (fmt) (Entered: 03/18/2004)

03/22/2004 -- Status conference held in person; Judge Robinson presiding; crt. rprr. V. Gunning; set a status/scheduling teleconf. for 6/24/04 at 4:30; held jointly with status conferences in CA NO. 97-700, 98-197, and 98-19-SLR. (rld) Modified on 03/22/2004 (Entered: 03/22/2004)

03/22/2004 -- Deadline updated; set Telephone Conference for 4:30 6/24/04 (rld) (Entered: 03/22/2004)

03/26/2004 1214 TRANSCRIPT filed; status conference for dates of 3/22/04; Judge Robinson presiding; Court Rtprr. V. Gunning (fmt) (Entered: 03/29/2004)

04/08/2004 1215 SEALED BRIEF by Medtronic Vascular in response to [1211-1] Cordis' Memorandum Concerning Issues Remaining to Be Resolved (fmt) Modified on 04/12/2004 (Entered: 04/12/2004)

04/08/2004 1216 SEALED Declaration of Robert A. Ersek (fmt) Modified on 04/12/2004 (Entered: 04/12/2004)

04/08/2004 1217 Response by Boston Scientific, Scimed Life Systems to Cordis' Waiver and Other New Arguments (fmt) (Entered: 04/12/2004)

04/09/2004 1218 Letter to Clerk from K. Jacobs Loudon re D.I. #s 1215 and 1216; should have been filed under seal; also filed a notice of incorporation of these documents in 97-700; enclosing envelopes and labels (fmt) (Entered: 04/12/2004)

04/15/2004 1219 STIPULATION to extend time for Cordis' reply, in connection with the further briefing directed by the Court at the 3/22/04 hearing; with proposed order (fmt) (Entered: 04/15/2004)

04/19/2004 -- So Ordered granting [1219-1] stipulation reset Reply. Deadline to 4/19/04 for Cordis to respond to briefing directed by the Court at the 3/22/04 hearing (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 04/19/2004)

04/19/2004 1220 Reply Brief by Cordis Corporation on any Remaining Issues Concerning BSC (fmt) (Entered: 04/20/2004)

04/19/2004 1221 Reply Brief by Cordis Corporation on Any Remaining Issues Concerning AVE (fmt) (Entered: 04/20/2004)

05/04/2004 1223 Letter to Judge Robinson from N. Levitsky requesting expedited ruling on LPL's Motion (fmt) (Entered: 05/06/2004)

05/05/2004 1222 ORDER granting [1199-1] motion for Leave for an Order Allowing the Production of Documents in Related California Litigation; SEE ORDER FOR COMPLETE DETAILS; CNSL. FOR CORDIS MAY REVIEW THIS PRODUCTION, CONSISTENT WITH THE TERMS OF THE PROTECTIVE ORDER (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 05/05/2004)

05/11/2004 1224 SEALED MOTION by Medtronic Vascular for Leave to File Surreply Answer Brief due 5/25/04 re: [1224-1] motion (fmt) (Entered: 05/12/2004)

05/12/2004 1225 Letter to Clerk from P. Bangle re D.I. # 1224; the declaration of Dr. Salisbury, Exhibit 2, should have an Exhibit A attached to it, consisting of 3 letters; enclosing letters to be inserted at the end of the Declaration of Dr. Salisbury, as Exhibit A to that Declaration (fmt) (Entered: 05/13/2004)

05/12/2004 1226 EXHIBIT B signed by Adam Hulbig certifying understanding of Order (fmt) (Entered: 05/14/2004)

05/12/2004 1227 EXHIBIT B signed by Brian H. Corcoran certifying understanding of the Order (fmt) (Entered: 05/19/2004)

05/14/2004 1228 ORDER outlining schedule for next phase of this complex litigation: Medtronic may supplement the record to reflect any changes in law; BSC may file a motion for sum. jgm.; by 6/14/04 both parties may file opening briefs according to this order; Cordis may file a responding brief by 6/28/04; reply briefs due 7/26/04; depts.' experts may file suppl. rebuttal reports by 6/14/04, Cordis may file a suppl. rebuttal report by 7/12/04, all expert discovery shall be completed by 8/12/04; court will conduct a teleconference on 8/30/04 at 4:30 p.m. to determine if trial or further motion practice is the most appropriate means to resolve this litigation; cnsl. for Medtronic shall initiate the call; SEE ORDER FOR FURTHER DETAILS; (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 05/19/2004)

05/27/2004 1229 STIPULATION amending certain deadlines set forth in the 5/14/04 Order; with proposed order (fmt) (Entered: 05/27/2004)

05/28/2004 -- So Ordered granting [1229-1] stipulation; Medtronic and BSC shall file briefs on amendment-based estoppel by 6/14/04; Cordis' answering brief due 7/12/04; reply briefs due 7/26/04; Medtronic and BSC's suppl. expert rpts. on validity due 6/28/04; Cordis' suppl. rebuttal expert rpt. due 7/26/04; all expert discovery completed by 8/26/04; teleconf. re status set for 8/30/04 at 4:30 shall proceed as scheduled. (signed by Judge Sue L. Robinson) Notice to all

parties. (rld) (Entered: 05/28/2004)

05/28/2004 -- Deadline updated; set telephonic Status Conference for 4:30 8/30/04 (rld) (Entered: 05/28/2004)

06/11/2004 1230 MOTION by Cordis Corporation with Proposed Order for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC Answer Brief due 6/25/04 re: [1230-1] motion (fmt) (Entered: 06/14/2004)

06/11/2004 1231 Opening Brief Filed by Cordis Corporation [1230-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC (fmt) (Entered: 06/14/2004)

06/14/2004 1232 MOTION by Boston Scientific, Scimed Life Systems with Proposed Order for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel Answer Brief due 6/28/04 re: [1232-1] motion (fmt) (Entered: 06/15/2004)

06/14/2004 1233 Opening Brief Filed by Boston Scientific, Scimed Life Systems [1232-1] motion for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel (fmt) (Entered: 06/15/2004)

06/14/2004 1234 Opening Brief Filed by Medtronic Vascular on Amendment-Based Estoppel Pursuant to the Court's 5/14/04 Order (D.I. 1228) (fmt) (Entered: 06/15/2004)

06/14/2004 1235 Appendix to Brief Filed by Medtronic Vascular Appending [1234-1] opening brief (fmt) (Entered: 06/15/2004)

06/25/2004 1236 STIPULATION amending deadlines set forth in the Court's Order, dated 5/14/04; with proposed order (fmt) (Entered: 06/29/2004)

06/25/2004 1237 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1230-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC - Reply Brief due 7/2/04 (fmt) (Entered: 06/29/2004)

06/25/2004 1238 Answer Brief Filed by Medtronic Vascular [1230-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC - Reply Brief due 7/2/04 (fmt) (Entered: 06/29/2004)

07/01/2004 -- So Ordered granting [1236-1] stipulation reset Scheduling Order Deadlines: Expert Discovery deadline extended to 8/26/04 telephonic status conf. set for 8/30/04 at 4:30 shall proceed as scheduled. (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 07/01/2004)

07/08/2004 1239 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re Expert Report of Reginald Low, M.D. and Expert Report of Alan J. Snyder, Ph.D. (rld) (Entered: 07/09/2004)

07/12/2004 1240 Answer Brief Filed by Cordis Corporation in Opposition to AVE's motion for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel - Reply Brief due 7/19/04 (fmt) Modified on 07/14/2004 (Entered: 07/14/2004)

07/13/2004 1241 Answer Brief Filed by Cordis Corporation [1232-1] motion for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel - Reply Brief due 7/20/04 (fmt) (Entered: 07/14/2004)

07/26/2004 1242 Reply Brief Filed by Boston Scientific, Scimed Life Systems [1232-1] motion for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel (fmt) (Entered: 07/27/2004)

07/26/2004 1243 Reply Brief Filed by Medtronic Vascular On Amendment-Based Estoppel Pursuant to the Court's May 14,2004 Order (D.I. 1228) (fmt) (Entered: 07/27/2004)

07/27/2004 1244 CERTIFICATE OF SERVICE by Cordis Corporation re request for prod. of docs. and things to Medtronic Vascular, Inc. (fmt) (Entered: 07/28/2004)

07/29/2004 1245 CERTIFICATE OF SERVICE by Cordis Corporation re request for prod. of docs. and things to Boston Scienfic Corporation (fmt) (Entered: 07/30/2004)

08/02/2004 1246 CERTIFICATE OF SERVICE by Cordis Corporation re obj's and responses to Medtronic Vascular Inc.'s reqs. for docs. and things (fmt) (Entered: 08/03/2004)

08/09/2004 -- Tele-conference held; Judge Robinson presiding; Court Rptr. B. Gaffigan present; re: discovery issues; held jointly with 97-700, 98-19 and 98-197 (fmt) (Entered: 08/10/2004)

08/09/2004 1247 Steno Notes for 8/9/04 teleconference; Judge Robinson presiding; Court Rptr. B. Gaffigan (fmt) (Entered: 08/10/2004)

08/09/2004 1248 TRANSCRIPT filed [0-0] telephone conference for dates of 8/9/04; Judge Robinson presiding; Court Rptr. B. Gaffigan (fmt) (Entered: 08/10/2004)

08/10/2004	1249	CERTIFICATE OF SERVICE by Cordis Corporation re amended objs and responses to requests for docs and things (fmt) (Entered: 08/10/2004)
08/16/2004	--	Deadline updated; set in-person Status Conference for 8:00 9/22/04 per 8/9/04 teleconf. (rld) (Entered: 08/16/2004)
08/30/2004	1250	CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re discovery (fmt) (Entered: 08/30/2004)
09/21/2004	1251	MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/21/2004)
09/21/2004	1252	ORDER denying Medtronic AVE's motion for partial summary jgm. (SEE D.I. 1228, 1234); denying [1232-1] motion for Partial Summary Judgment of Amendment-Based Prosecution History Estoppel, granting [1230-1] motion for Reconsideration of the Construction of "Substantially Uniform Thickness" In Light of the Recent CAFC Decision in Cordis v. BSC (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/21/2004)
09/22/2004	--	Mooting [1224-1] motion for Leave to File Surreply per Court's order of 9/21/04 (rld) (Entered: 09/22/2004)
09/22/2004	--	Tele-conference held; Judge Robinson presiding; Court Rptr. V. Gunning present; Held jointly with 97-700-SLR, 98-19-SLR and 98-197-SLR; re: case status (fmt) (Entered: 09/24/2004)
09/23/2004	1253	TRANSCRIPT filed for dates of 9/22/04 Teleconference; Judge Robinson presiding; Court Rptr. V. Gunning (fmt) (Entered: 09/23/2004)
09/28/2004	1254	ORDER on or before 10/26/04 Medtronic AVE and Boston Scientific may submit supplemental expert reports on the issue of infringement, the experts submitting reports shall be made available for deposition during the subsequent two weeks; on or before 12/7/04 Cordis may either submit responsive suppl. expert reports or a motion for sum. jgm. based on the trial record and the supplemental discovery record; SEE Order for futher details; (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 09/28/2004)
10/04/2004	1255	STIPULATION re deadline for motion for sum jgm on the issue of obviousness; with proposed order (fmt) (Entered: 10/05/2004)
10/05/2004	1256	MOTION by Boston Scientific, Scimed Life Systems for Reconsideration of [1252-1] order, [1251-1] order Answer Brief due 10/19/04 re: [1256-1] motion (fmt) (Entered: 10/06/2004)
10/05/2004	1257	Opening Brief Filed by Boston Scientific, Scimed Life Systems [1256-1] motion for Reconsideration of [1252-1] order, [1251-1] order (fmt) (Entered: 10/06/2004)
10/05/2004	1258	MOTION by Cordis Corporation with Proposed Order for Summary Judgment on Obviousness Answer Brief due 10/19/04 re: [1258-1] motion (fmt) (Entered: 10/06/2004)
10/05/2004	1259	Opening Brief Filed by Cordis Corporation [1258-1] motion for Summary Judgment on Obviousness (fmt) (Entered: 10/06/2004)
10/06/2004	--	So Ordered granting [1255-1] stipulation extending by one day the deadline for Cordis to file its motion for summary jgm. on issue of obviousness (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/06/2004)
10/06/2004	1260	Letter to Clerk from J. Ingersoll re Reply Brief in Further Support of BSC's Motion for Sum. Jgm. of Non-Infringement and BSC's Opening Brief in Support of Its Motion for Reconsideration of the Court's 9/21/04 Order and Memorandum Opinion; copies filed with the Court were illegible; enclosing replacement copies of the briefs; request they be substituted for those currently on file(fmt) Modified on 10/08/2004 (Entered: 10/08/2004)
10/07/2004	1261	Supplemental Brief by Medtronic Vascular in support of its Renewed Motion for Judgment as a Matter of Law (fmt) (Entered: 10/08/2004)
10/12/2004	1262	Combined MOTION by Cordis Corporation with Proposed Order for clarification and Reconsideration of [1254-1] order , and to Expedite Answer Brief due 10/26/04 re: [1262-1] motion, Answer Brief due 10/26/04 re: [1262-2] motion (rld) (Entered: 10/13/2004)
10/13/2004	1263	Opening Brief Filed by Cordis Corporation [1262-1] motion for clarification and Reconsideration of [1254-1] order, [1262-2] motion to Expedite (rld) (Entered: 10/13/2004)
10/18/2004	1264	Joinder by Medtronic Vascular in The Boston Scientific Defts' Motion for Reconsideration of the Court's September 21, 2004 Order and Memorandum Opinion (fmt) (Entered: 10/19/2004)
10/20/2004	1265	Answer Brief Filed by Cordis Corporation [1256-1] motion for Reconsideration of [1252-1] order, [1251-1] order - Reply Brief due 10/27/04 (fmt) (Entered: 10/28/2004)
10/21/2004	1266	STIPULATION to extend the deadline by which Cordis must respond to Medtronic Vascular's supplemental brief in support of its renewed motion for jgm. of a matter of law; with proposed order (fmt) (Entered: 10/21/2004)

10/22/2004 -- So Ordered granting [1266-1] stipulation Cordis shall have until 10/25/04 to file its response to D.I. 1261 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 10/22/2004)

10/25/2004 1267 Response by Cordis Corporation to [1261-1] AVE's Supplemental Brief in Support of its Motion for JMOL on the '984 Patent's "To Flexibly Connect" Limitation (fmt) (Entered: 10/26/2004)

10/26/2004 1268 STIPULATION And Order Amending the September 28, 2004 Order (fmt) (Entered: 10/27/2004)

10/26/2004 1269 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1262-1] motion for clarification and Reconsideration of [1254-1] order - Reply Brief due 11/2/04 (fmt) (Entered: 10/28/2004)

10/26/2004 1270 Answer Brief Filed by Medtronic Vascular [1262-1] motion for clarification and Reconsideration of [1254-1] order - Reply Brief due 11/2/04, [1262-2] motion to Expedite - Reply Brief due 11/2/04 (fmt) (Entered: 10/28/2004)

10/28/2004 1271 Response by Cordis Corporation to AVE's Attempt to Join In BSC's Motion for Reconsideraton of the Court's September 21, 2004 Order (fmt) (Entered: 10/28/2004)

11/01/2004 1272 CERTIFICATE OF SERVICE by Boston Scientific, Scimed Life Systems re supplemental expert report of Reginald Low, M.D.; Expert Report of Jacob (Kobi) Richter, Ph.D. and Supplemental Expert Report of Alan J. Snyder, Ph.D. (fmt) (Entered: 11/01/2004)

11/01/2004 -- So Ordered granting [1268-1] stipulation; date for submission of Medtronic's and BSC's supplemental expert reports on the issue of infringement is changed to 10/29/04; time period for which the experts submitting rpts. shall be available for depo. is now 15 days from submission of the rpts.; Cordis's responsive submissions now due 12/10/04 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/02/2004)

11/03/2004 1273 STIPULATION to extend time for opposition briefs to Cordis' Motion for Sum. Jgm. on Obviousness and to extend time for Cordis' reply briefs; with proposed order (fmt) (Entered: 11/03/2004)

11/04/2004 -- So Ordered granting [1273-1] stipulation reset Answer Brief Deadline to 11/8/04 re: [1258-1] motion for Summary Judgment on Obviousness , and reset Reply Brief Deadline to 11/22/04 re: [1258-1] motion for Summary Judgment on Obviousness (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/04/2004)

11/08/2004 1274 STIPULATION to extend time for Medtronic Vascular, Inc. to file a Reply in support of its supplemental brief on it motion for JMOL based on the "to flexibly connect" limitation and a reply in support of its joinder in BSC's motion for reconsideration; with proposed order (fmt) (Entered: 11/08/2004)

11/08/2004 1275 Answer Brief Filed by Medtronic Vascular [1258-1] motion for Summary Judgment on Obviousness - Reply Brief due 11/22/04 (fmt) (Entered: 11/09/2004)

11/08/2004 1276 Answer Brief Filed by Boston Scientific, Scimed Life Systems [1258-1] motion for Summary Judgment on Obviousness - Reply Brief due 11/22/04 (fmt) (Entered: 11/09/2004)

11/09/2004 -- So Ordered granting [1274-1] stipulation that Medtronic Vascular, Inc. may file a reply in support of its suppl. brief on its motion for JMOL based on the "to flexibly connect" limitation and a reply in support of its joinder in BSC's motion for reconsideration (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 11/09/2004)

11/09/2004 1277 SEALED Appendix to Brief Filed by Medtronic Vascular Appending [1275-1] answer brief (fmt) (Entered: 11/09/2004)

11/10/2004 1278 MEMORANDUM by Medtronic Vascular in support of [1261-1] suppl. brief on its motion for JMOL based on the "to flexibly connect" limitation (rld) (Entered: 11/12/2004)

11/10/2004 1279 Limited Reply by Medtronic Vascular in support of [1264-1] joinder in BSC's motion for reconsideration to correct Cordis' misstatement (rld) (Entered: 11/12/2004)

11/22/2004 1280 Combined Reply Brief Filed by Cordis Corporation [1258-1] motion for Summary Judgment on Obviousness (fmt) (Entered: 11/23/2004)

12/01/2004 1281 ORDER denying [1262-1] motion for clarification and Reconsideration of [1254-1] order, denying [1262-2] motion to Expedite, denying [1256-1] motion for Reconsideration of [1252-1] order, [1251-1] order; IT IS FURTHER ORDERED THAT for the duration of this case the court will not consider any future motions for reconsideration as this case has consumed an enormous amt. of judicial resources (signed by Judge Sue L. Robinson) copies to: cnsl. (rld) (Entered: 12/01/2004)

12/07/2004 -- Tele-conference held re discovery issues; Judge Robinson presiding; V. Gunning crt. rptr.; held in cases: CA NO. 97-550, 97-700, 98-19, and 98-197-SLR. (rld) (Entered: 12/13/2004)

12/15/2004 1282 TRANSCRIPT filed [0-0] telephone conference for dates of 12/7/04; Judge Robinson presiding;

Court Rptr. V. Gunning (fmt) (Entered: 12/16/2004)

12/21/2004 1283 STIPULATED Pretrial Scheduling Order (fmt) (Entered: 12/22/2004)

01/13/2005 -- Deadline updated; set Telephone Conference for 9:00 1/18/05 (rld) (Entered: 01/13/2005)

01/18/2005 -- Tele-conference held, Judge Robinson presiding; crt. rptr. V. Gunning present; re trial schedule; held jointly with CA NO. 97-700, 98-19, and 98-197-SLR. (rld) (Entered: 01/18/2005)

01/18/2005 -- Deadline updated; set Scheduling Order Deadlines: Pretrial conference by 5:00 2/10/05; Jury Trial Date Deadline 9:30 3/4/05 (rld) (Entered: 01/18/2005)

01/20/2005 1284 TRANSCRIPT filed [0-0] telephone conference for dates of 1/18/05; Judge Robinson presiding; crt. rptr. V. Gunning (rld) (Entered: 01/21/2005)

01/21/2005 1285 Letter to Judge Robinson from L. Polizoti indentifying by D.I. number the briefing on Medtronic Vascular's motion that it does not infringe Cordis' '984 patent because the accused products do not meet the "to flexibly connect limitation" (fmt) (Entered: 01/24/2005)

01/24/2005 1286 STIPULATION with proposed order re motions in limine (fmt) (Entered: 01/24/2005)

01/25/2005 -- So Ordered granting [1286-1] stipulation reset Motion in Limine Filing deadline to 1/25/05, responses due 2/7/05 (signed by Judge Sue L. Robinson) Notice to all parties. (rld) (Entered: 01/25/2005)

01/25/2005 1287 MOTION by Boston Scientific, Scimed Life Systems in Limine No. 1 to Exclude Prior Proceedings, Decisions and Verdicts in this Litigation, Apart from the Current Claim Construction , in Limine No. 2 To Exclude Proceedings, Decisions, Verdicts and Settlements in other Litigations and Arbitrations , in Limine No. 3 To Exclude the Examiner's Comments Regarding the Prior Art Palmaz Abstract and Ersek Patent During Both Reexaminations of the '665 Patent , in Limine No. 4 to Preclude Cordis From Introducing Evidence or Arguing that the Selection of the Prior Art Or the Review of the Claim Involved Hindsight , in Limine No. 5 to Preclude Cordis from Offering Evidence Relating to the Nonobviousness of Claim 44 of the '762 Patent , in Limine No. 6 To Preclude Cordis from Referring to a Prior Art Determination that the Nir Stent "C-Region" Infringes "Tubular Member" by Equivalents , in Limine No. 7 to Confirm the Applicability of the Court's Prior In Limine Rulings Answer Brief due 2/7/05 re: [1287-1] motion, Answer Brief due 2/7/05 re: [1287-2] motion, Answer Brief due 2/7/05 re: [1287-3] motion, Answer Brief due 2/7/05 re: [1287-4] motion, Answer Brief due 2/7/05 re: [1287-5] motion, Answer Brief due 2/7/05 re: [1287-6] motion, Answer Brief due 2/7/05 re: [1287-7] (fmt) Modified on 01/26/2005 (Entered: 01/26/2005)

01/25/2005 1288 Proposed Order filed by Boston Scientific, Scimed Life Systems [1287-1] motion in Limine No. 1 to Exclude Prior Proceedings, Decisions and Verdicts in this Litigation, Apart from the Current Claim Construction, [1287-2] motion in Limine No. 2 To Exclude Proceedings, Decisions, Verdicts and Settlements in other Litigations and Arbitrations, [1287-3] motion in Limine No. 3 To Exclude the Examiner's Comments Regarding the Prior Art Palmaz Abstract and Ersek Patent During Both Reexaminations of the '665 Patent, [1287-4] motion in Limine No. 4 to Preclude Cordis From Introducing Evidence or Arguing that the Selection of the Prior Art Or the Review of the Claim Involved Hindsight, [1287-5] motion in Limine No. 5 to Preclude Cordis from Offering Evidence Relating to the Nonobviousness of Claim 44 of the '762 Patent, [1287-6] motion in Limine No. 6 To Preclude Cordis from Referring to a Prior Art Determination that the Nir Stent "C-Region" Infringes "Tubular Member" by Equivalents, [1287-7] motion in Limine No. 7 to Confirm the Applicability of the Court's Prior In Limine Rulings (fmt) (Entered: 01/26/2005)

01/25/2005 1289 SEALED Appendix of Exhibits to Motions in Limine (Nos. 1 Through 7) Filed by Boston Scientific, Scimed Life Systems (fmt) (Entered: 01/26/2005)

01/25/2005 1290 SEALED MOTION by Medtronic Vascular in Limine No. 1 , in Limine No. 2 , in Limine No. 3 , in Limine No. 4 , in Limine No. 5 , in Limine No. 6 , in Limine No. 7 , in Limine No. 8 , in Limine No. 9 , in Limine No. 10 Answer Brief due 2/7/05 re: [1290-1] motion, Answer Brief due 2/7/05 re: [1290-2] motion, Answer Brief due 2/7/05 re: [1290-3] motion, Answer Brief due 2/7/05 re: [1290-4] motion, Answer Brief due 2/7/05 re: [1290-5] motion, Answer Brief due 2/7/05 re: [1290-6] motion, Answer Brief due 2/7/05 re: [1290-7] motion, Answer Brief due 2/7/05 re: [1290-8] motion, Answer Brief due 2/7/05 re: [1290-9] motion, Answer Brief due 2/7/05 re: [1290-10] motion (fmt) (Entered: 01/26/2005)

01/25/2005 1291 SEALED Appendix to Motions In Limine, Nos. 1-10 Filed by Medtronic Vascular (fmt) (Entered: 01/26/2005)

01/26/2005 1292 SEALED MOTION by Cordis Corporation in Limine No. 1 , in Limine No. 2 , in Limine No. 3 , in Limine No. 4 , in Limine No. 5 , in Limine No. 6 , in Limine No. 7 , in Limine No. 8 , in Limine No. 9 , in Limine No. 10 , in Limine No. 11 , in Limine No. 12 , in Limine No. 13 , in Limine No. 14 , in Limine No. 15 , in Limine No. 16 , in Limine No. 17 , in Limine No. 18 , in Limine No. 19

- Answer Brief due 2/7/05 re: [1292-1] motion, Answer Brief due 2/7/05 re: [1292-2] motion, Answer Brief due 2/7/05 re: [1292-3] motion, Answer Brief due 2/7/05 re: [1292-4] motion, Answer Brief due 2/7/05 re: [1292-5] motion, Answer Brief due 2/7/05 re: [1292-6] motion, Answer Brief due 2/7/05 re: [1292-7] motion, Answer Brief due 2/7/05 re: [1292-8] motion, Answer Brief due 2/7/05 re: [1292-9] motion, Answer Brief due 2/7/05 re: [1292-10] motion, Answer Brief due 2/7/05 re: [1292-11] motion, Answer Brief due 2/7/05 re: [1292-12] motion, Answer Brief due 2/7/05 re: [1292-13] motion, Answer Brief due 2/7/05 re: [1292-14] motion, Answer Brief due 2/7/05 re: [1292-15] motion, Answer Brief due 2/7/05 re: [1292-16] motion, Answer Brief due 2/7/05 re: [1292-17] motion, Answer Brief due 2/7/05 re: [1292-18] motion, Answer Brief due 2/7/05 re: [1292-19] motion (fmt) (Entered: 01/27/2005)
- 01/26/2005 1293 SEALED Appendix of Exhibits to Cordis' In Limine Motions; VOLUME 1 Filed by Cordis Corporation (fmt) (Entered: 01/27/2005)
- 01/26/2005 1294 SEALED Appendix of Exhibits to Cordis' In Limine Motions Filed by Cordis Corporation; VOLUME II (fmt) (Entered: 01/27/2005)
- 01/27/2005 1295 MEMORANDUM OPINION (signed by Judge Sue L. Robinson) copies to: cnsl (fmt) (Entered: 01/28/2005)
- 01/27/2005 1296 ORDER denying [1258-1] motion for Summary Judgment on Obviousness; Medtronic shall submit bills of cost for the reasonable costs of briefing associated with Cordis' motion for summary judgment by 3/22/05 ((signed by Judge Sue L. Robinson) copies to: cnsl (fmt) (Entered: 01/28/2005)
- 02/01/2005 1297 Steno Notes for 1/18/05 Teleconf. (fmt) (Entered: 02/01/2005)
- 02/02/2005 1298 CERTIFICATE OF SERVICE by Medtronic Vascular re ntc. to Cordis Corporation and Johnson & Johnson pursuant to 35 U.S.C. section 282 (fmt) (Entered: 02/02/2005)
- 02/07/2005 1299 SEALED Answer Brief Filed by Cordis Corporation [1287-1] motion in Limine No. 1 to Exclude Prior Proceedings, Decisions and Verdicts in this Litigation, Apart from the Current Claim Construction, [1287-2] motion in Limine No. 2 To Exclude Proceedings, Decisions, Verdicts and Settlements in other Litigations and Arbitrations, [1287-3] motion in Limine No. 3 To Exclude the Examiner's Comments Regarding the Prior Art Palmaz Abstract and Ersek Patent During Both Reexaminations of the '665 Patent, [1287-4] motion in Limine No. 4 to Preclude Cordis From Introducing Evidence or Arguing that the Selection of the Prior Art Or the Review of the Claim Involved Hindsight, [1287-5] motion in Limine No. 5 to Preclude Cordis from Offering Evidence Relating to the Nonobviousness of Claim 44 of the '762 Patent, [1287-6] motion in Limine No. 6 To Preclude Cordis from Referring to a Prior Art Determination that the Nir Stent "C-Region" Infringes "Tubular Member" by Equivalents, [1287-7] motion in Limine No. 7 to Confirm the Applicability of the Court's Prior In Limine Rulings (rld) (Entered: 02/08/2005)
- 02/07/2005 1300 SEALED Answer Brief Filed by Cordis Corporation [1290-1] motion in Limine No. 1, [1290-2] motion in Limine No. 2, [1290-3] motion in Limine No. 3, [1290-4] motion in Limine No. 4, [1290-5] motion in Limine No. 5, [1290-6] motion in Limine No. 6, [1290-7] motion in Limine No. 7, [1290-8] motion in Limine No. 8, [1290-9] motion in Limine No. 9, [1290-10] motion in Limine No. 10 (rld) (Entered: 02/08/2005)
- 02/07/2005 1301 SEALED Appendix to Brief Filed by Cordis Corporation Appending [1300-1] answer brief, [1299-1] answer brief (rld) (Entered: 02/08/2005)
- 02/07/2005 1302 SEALED Answer Brief Filed by Boston Scientific, Scimed Life Systems [1292-1] motion in Limine No. 1, [1292-2] motion in Limine No. 2, [1292-3] motion in Limine No. 3, [1292-4] motion in Limine No. 4, [1292-5] motion in Limine No. 5, [1292-6] motion in Limine No. 6, [1292-7] motion in Limine no. 7, [1292-8] motion in Limine No. 8, [1292-9] motion in Limine No. 9, [1292-10] motion in Limine No. 10, [1292-11] motion in Limine No. 11, [1292-12] motion in Limine No. 12, [1292-13] motion in Limine No. 13, [1292-14] motion in Limine No. 14, [1292-15] motion in Limine No. 15, [1292-16] motion in Limine No. 16, [1292-17] motion in Limine No. 17, [1292-18] motion in Limine No. 18, [1292-19] motion in Limine No. 19 (rld) (Entered: 02/08/2005)
- 02/07/2005 1303 SEALED Appendix to Brief Filed by Boston Scientific, Scimed Life Systems Appending [1302-1] answer brief (rld) (Entered: 02/08/2005)
- 02/07/2005 1304 SEALED Answer Brief Filed by Medtronic Vascular [1292-1] motion in Limine No. 1, [1292-2] motion in Limine No. 2, [1292-3] motion in Limine No. 3, [1292-4] motion in Limine No. 4, [1292-5] motion in Limine No. 5, [1292-6] motion in Limine No. 6, [1292-7] motion in Limine no. 7, [1292-8] motion in Limine No. 8, [1292-9] motion in Limine No. 9, [1292-10] motion in Limine No. 10, [1292-11] motion in Limine No. 11, [1292-12] motion in Limine No. 12, [1292-13] motion in Limine No. 13, [1292-14] motion in Limine No. 14, [1292-15] motion in Limine No. 15, [1292-16] motion in Limine No. 16, [1292-17] motion in Limine No. 17, [1292-18] motion in Limine No. 18, [1292-19] motion in Limine No. 19 (rld) (Entered: 02/08/2005)

02/07/2005	1305	SEALED Appendix to Brief Filed by Medtronic Vascular Appending [1304-1] answer brief (rld) (Entered: 02/08/2005)
02/08/2005	1306	Proposed Preliminary Jury instructions by Cordis Corporation, Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/08/2005	1307	Proposed Preliminary Jury instructions by Cordis Corporation, Medtronic Vascular (rld) (Entered: 02/09/2005)
02/08/2005	1308	Proposed Jury instructions by Cordis Corporation, Medtronic Vascular (rld) (Entered: 02/09/2005)
02/08/2005	1309	Proposed Jury instructions by Cordis Corporation, Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/08/2005	1310	Proposed pre-trial order filed by Cordis Corporation, Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/08/2005	1311	Proposed pre-trial order filed by Cordis Corporation, Medtronic Vascular (rld) (Entered: 02/09/2005)
02/08/2005	1312	Proposed Verdict Sheet filed by Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/08/2005	1313	Proposed Special Verdict Sheet and interrog. to the jury filed by Cordis Corporation (Cordis v. Medtronic AVE) (rld) (Entered: 02/09/2005)
02/08/2005	1314	Proposed Special Verdict Sheet and interrog. to jury filed by Cordis Corporation (Cordis v. BSC) (rld) (Entered: 02/09/2005)
02/08/2005	1315	Proposed Verdict Sheet filed by Medtronic Vascular (rld) (Entered: 02/09/2005)
02/08/2005	1316	Voir dire questions by Cordis Corporation (Cordis v. Medtronic AVE) (rld) (Entered: 02/09/2005)
02/08/2005	1317	Voir dire questions by Cordis Corporation (Cordis v. BSC) (rld) (Entered: 02/09/2005)
02/08/2005	1318	Voir dire questions by Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/09/2005	1319	CORRECTED Proposed Jury instructions by Cordis Corporation, Medtronic Vascular to replace earlier filed version (D.I. 1308) (rld) (Entered: 02/09/2005)
02/09/2005	1320	Proposed Supplement to the joint Jury instructions by Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/09/2005	1321	Supplement to the Proposed pre-trial order filed by Boston Scientific, Scimed Life Systems (rld) (Entered: 02/09/2005)
02/10/2005	--	Pre-trial conference held; Judge Robinson presiding; crt. rptr. V. Gunning; held jointly with Civ. Nos. 97-700 and 98-19-SLR. (rld) (Entered: 02/11/2005)
02/10/2005	1322	NOTICE by Medtronic Vascular to take deposition of Gregory Diskant and Eugene Gelernter on 2/18/05 (rld) (Entered: 02/11/2005)
02/15/2005	1323	NOTICE OF SERVICE of Ntc. under 35 U.S.C. Section 282 by Boston Scientific Corporation, Scimed Life Systems, Inc..(rld,) (Entered: 02/16/2005)
02/16/2005	1324	Letter to Judge Robinson from S. Balick regarding court's req. during pretrial conference for parties to identify any in limine motions which there is no longer any dispute; parties far from agreement therefore Cordis submits a listing of the motions they will not contest. (rld,) (Entered: 02/16/2005)
02/17/2005	1325	Letter to Judge Robinson from L. Polizoti responding to D.I. 1324; Medtronic AVE submits this letter summarizing which motions in limine are no longer in dispute. (fmt,) (Entered: 02/18/2005)
02/22/2005	1326	TRANSCRIPT of Pretrial Conference held on 2/10/05 before Judge Robinson. Court Reporter: V. Gunning. (Transcript on file in Clerk's Office) (fmt,) (Entered: 02/23/2005)
02/22/2005	1327	Letter to Judge Robinson from K. Jacobs Loudon regarding motion in limine no. 14; Medtronic believes this motion is moot. (fmt,) (Entered: 02/23/2005)
02/22/2005	1328	Letter to Judge Robinson from K. Keller notifying the Court that it has no substantive dispute with Cordis' characterization of the in limine issues that are no longer in dispute. (fmt,) (Entered: 02/23/2005)
02/22/2005	1330	NOTICE of Substitution of Primary Attorney by Karen Jacobs Loudon on behalf of Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc. (fmt,) (Entered: 02/24/2005)

- 02/23/2005 1329 MEMORANDUM ORDER: Medtronic's renewed JMOL motion is denied; granting [1287-1] Motion in Limine, granting [1287-2] Motion in Limine, granting as to ACS arbitration and settlement, moot as to ACS license agreement, and denied as to Abbott & Jomed licenses [1287-3] Motion in Limine, granting in part and denying in part [1287-4] Motion in Limine, finding as moot [1287-5] Motion in Limine, finding as moot [1287-6] Motion in Limine, granting [1287-7] Motion in Limine, granting [1290-1] Motion in Limine, finding as moot [1290-2] Motion in Limine, granting in part and denying in part [1290-3] Motion in Limine, denying [1290-4] Motion in Limine, finding as moot [1290-5] Motion in Limine, denying [1290-6] Motion in Limine, denying [1290-7] Motion in Limine, granting [1290-8] Motion in Limine, granting [1290-9] Motion in Limine, granting [1290-10] Motion in Limine, granting [1292-1] Motion in Limine, granting [1292-2] Motion in Limine, finding as moot [1292-3] Motion in Limine, finding as moot [1292-4] Motion in Limine, finding as moot [1292-5] Motion in Limine, granting [1292-6] Motion in Limine, granting [1292-7] Motion in Limine, granting [1292-8] Motion in Limine, granting [1292-9] Motion in Limine, granting [1292-10] Motion in Limine, granting [1292-11] Motion in Limine, granting [1292-12] Motion in Limine, granting [1292-13] Motion in Limine, granting [1292-14] Motion in Limine, granting with an exception [1292-15] Motion in Limine, granting [1292-16] Motion in Limine, denying [1292-17] Motion in Limine, denying [1292-18] Motion in Limine, granting [1292-19] Motion in Limine; SEE ORDER FOR COMPLETE DETAILS Order of trial detailed on last 2 pages of this memorandum order.. Signed by Judge Sue L. Robinson on 2/23/05. (rld,) (Entered: 02/23/2005)
- 02/23/2005 1331 Submission on the relevance of its patents by Medtronic Vascular, Inc.. (rld,) (Entered: 02/24/2005)
- 02/25/2005 1332 NOTICE OF SERVICE of four subpoenas duces tecum served upon Medtronic Vascular, Inc. requiring that it produce for inspection and use at trial all physical models and demonstratives which were present in courtroom 6B on any day between and including February 10, 2005 and February 17, 2005 by Cordis Corporation.(fmt,) (Entered: 02/25/2005)
- 02/25/2005 1333 MOTION for Pro Hac Vice Appearance of Attorney Scott B. Howard, Kathleen M. Crotty, Christopher M.P. Jackson, Wendy Kemp Akbar, Catherine A. Williams, and Eric I Harris - filed by Cordis Corporation. (fmt,) (Entered: 02/28/2005)
- 02/25/2005 1334 MOTION to Compel, MOTION for Leave to Supplement the Expert Reports of Dr. Robert Wagoner and Dr. Richard Heuser - filed by Medtronic Vascular, Inc.. (fmt,) (Entered: 02/28/2005)
- 02/25/2005 1335 OPENING BRIEF in Support re [1334] MOTION to Compel MOTION for Leave to File filed by Medtronic Vascular, Inc..Answering Brief/Response due date per Local Rules is 3/11/2005. (fmt,) (Entered: 02/28/2005)
- 02/28/2005 1336 Cordis' Response to Medtronic Vascular's Submission on the Relevance of its Patents filed by Cordis Corporation. (fmt,) (Entered: 02/28/2005)
- 02/28/2005 1337 REVISED MEMORANDUM AND ORDER re [1329] Order on Motions in Limine, adding claims 51 and 54 of the '762 patent to the pending issues noted in Part 4.a.1 and removing references to damages from Part 6.. Signed by Judge Sue L. Robinson on 2/28/05. (rld,) (Entered: 02/28/2005)
- 03/01/2005 1338 Letter to The Honorable Sue L. Robinson from Leslie A. Polizoti regarding Permission to retrieve exhibits admitted into evidence. (Polizoti, Leslie) (Entered: 03/01/2005)
- 03/01/2005 -- SO ORDERED, re [1333] MOTION for Pro Hac Vice Appearance of Attorney Scott B. Howard, Kathleen M. Crotty, Christopher M.P. Jackson, Wendy Kemp Akbar, Catherine A. Williams, and Eric I Harris filed by Cordis Corporation, . Signed by Judge Sue L. Robinson on 3/1/05. (rld,) (Entered: 03/01/2005)
- 03/02/2005 1339 MOTION for Pro Hac Vice Appearance of Attorney James G. Rizzo, Michael W. Connelly - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/02/2005)
- 03/02/2005 -- Medtronic AVE's Trial Exhibit 806 released to Morris, Nichols, Arsht & Tunnell, Leslie A. Polizoti on 3/2/05 (fmt,) (Entered: 03/02/2005)
- 03/02/2005 1340 Letter to The Honorable Sue L. Robinson from Steven J. Balick regarding request for retrieval of prior trial exhibits. (Balick, Steven) (Entered: 03/02/2005)
- 03/03/2005 1341 Letter to Dr. Peter T. Dalleo from Steven J. Balick regarding Attorney Conference Room for trial. (Balick, Steven) (Entered: 03/03/2005)
- 03/03/2005 -- PX 2940, PX 2958, PX 3243, PX 3692, PX 2353B, PX 2356A, PX 2230A, PX 2916, PX 3262, PX 3790A, PX 3796, PX 2230, PX 3986, PX 3987 released to S. Balick, Ashby & Geddes (fmt,) (Entered: 03/03/2005)
- 03/03/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Telephone Conference held on 3/3/2005. Re: exhibits for trial (Court Reporter L. Dibbs.) (rld,) (Entered: 03/04/2005)

03/04/2005 1342 ANSWERING BRIEF in Opposition to Ave's Motion to Compel and Motion for Leave to Supplement the Expert Reports of Dr. Robert Wagoner and Dr. Richard Heuser filed by Cordis Corporation. Reply Brief due date per Local Rules is 3/11/2005. (Attachments: # 1 # 2)(Day, John) (Entered: 03/04/2005)

03/04/2005 1343 ANSWERING BRIEF in Opposition Cordis' Submission Concerning the Scope of Dr. Ersek's Testimony filed by Cordis Corporation. Reply Brief due date per Local Rules is 3/11/2005. (Day, John) (Entered: 03/04/2005)

03/04/2005 -- PX 3792 released to S. Balick, Ashby & Geddes (fmt,) (Entered: 03/04/2005)

03/04/2005 1346 Voir Dire Questions To the Jury Panel(fmt,) (Entered: 03/07/2005)

03/04/2005 1347 Preliminary Jury Instructions. (fmt,) Additional attachment(s) added on 3/7/2005 (fmt,). (Entered: 03/07/2005)

03/04/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/4/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/07/2005)

03/05/2005 1344 (REDACTED VERSION OF D.I. 1354) MOTION Concerning Admissibility Of Product To Product Comparisons - filed by Medtronic Vascular, Inc.. (Louden, Karen) Modified on 3/9/2005 (fmt,). Modified on 3/9/2005 (fmt,). (Entered: 03/05/2005)

03/06/2005 1345 ANSWERING BRIEF in Opposition re 1344 MOTION Concerning Admissibility Of Product To Product Comparisons filed by Cordis Corporation. Reply Brief due date per Local Rules is 3/11/2005. (Balick, Steven) (Entered: 03/06/2005)

03/07/2005 -- SO ORDERED, re 1339 MOTION for Pro Hac Vice Appearance of Attorney James G. Rizzo, Michael W. Connelly filed by Medtronic Vascular, Inc., . Signed by Judge Sue L. Robinson on 3/4/05. (rld,) (Entered: 03/07/2005)

03/07/2005 1348 SEALED Letter to Chief Judge Robinson from Morris, Nichols/Karen Jacobs Loudon regarding outstanding trial matters. (Louden, Karen) Modified on 3/7/2005 (fmt,). (Entered: 03/07/2005)

03/07/2005 1349 Proposed Jury Instructions by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/07/2005)

03/07/2005 1350 MOTION for Pro Hac Vice Appearance of Attorney Walter E. Hanley, Jr., Huiya Wu, Kevin J. Prey, Yariv Waks and Mark A. Chapman - filed by Boston Scientific Corporation, Scimed Life Systems, Inc.. (Keller, Karen) (Entered: 03/07/2005)

03/07/2005 1351 NOTICE of Subpoena Directed to Marvin Woodall by Boston Scientific Corporation, Scimed Life Systems, Inc. (Keller, Karen) (Entered: 03/07/2005)

03/07/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/7/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/07/2005)

03/08/2005 1352 Revised Proposed Jury Instructions by Cordis Corporation. (Day, John) Modified on 3/8/2005 (fmt,). (Entered: 03/08/2005)

03/08/2005 1353 Revised Proposed form of Special Verdict and Interrogs to the Jury (Cordis v. Medtronic AVE) by Cordis Corporation. (Day, John) Modified on 3/8/2005 (fmt,). (Entered: 03/08/2005)

03/08/2005 -- SO ORDERED, re 1350 MOTION for Pro Hac Vice Appearance of Attorney Walter E. Hanley, Jr., Huiya Wu, Kevin J. Prey, Yariv Waks and Mark A. Chapman filed by Boston Scientific Corporation,, Scimed Life Systems, Inc., . Signed by Judge Sue L. Robinson on 3/8/05. (rld,) (Entered: 03/08/2005)

03/08/2005 1354 SEALED MOTION re 1344 MOTION Concerning Admissibility Of Product To Product Comparisons Sealed Documents - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/08/2005)

03/08/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/8/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/09/2005)

03/09/2005 -- MOOTING D.I. 1334, MOTION to Compel and MOTION for Leave to File filed by Medtronic Vascular, Inc., mooted per D.I. 1348 filed on 3/7/05 (rld,) (Entered: 03/09/2005)

03/09/2005 1355 MOTION for Judgment as a Matter of Law Of Non-Infringement - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/09/2005)

03/09/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/9/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/10/2005)

03/09/2005 -- In Open Court Judge Robinson granted in part and denied in part 1344 Redacted Motion Concerning Admissibility of Product to Product Comparisons, granted in part and denied in part 1354 SEALED Motion Concerning Admissibility of Product to Product Comparisons by Judge Sue L. Robinson on 3/9/05. (fmt,) (Entered: 03/11/2005)

03/10/2005 1356 VERDICT SHEET by Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc., Arterial Vascular Engineering, Inc.. (Polizoti, Leslie) (Entered: 03/10/2005)

03/10/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/10/2005. (Court Reporter Hawkins Reporting Service.) (fmt,) (Entered: 03/10/2005)

03/11/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/11/2005; D.I. 1355- DENIED by Judge Robinson on the Record; Plt's Oral Motion for JMOL on all issues - DENIED by Judge Robinson on the Record; Deft's Renewed Oral Motion for JMOL on All Issues - DENIED by Judge Robinson on the Record (Court Reporter Hawkins Reporting Service.) (fmt,) Modified on 3/18/2005 (fmt,). (Entered: 03/12/2005)

03/11/2005 -- In Open Court Judge Robinson denied 1355 Motion for Judgment as a Matter of Law by Judge Sue L. Robinson on 3/11/05. (fmt,) (Entered: 03/12/2005)

03/11/2005 1357 Charge to the Jury(Attachments: # 1 Jury Charge Part 2)(fmt,) (Entered: 03/14/2005)

03/14/2005 1358 JURY VERDICT; Cordis has shown that Medtronic AVE's MicroStent II infringes the limitation of the asserted claims; Cordis has shown that Medtronic AVE's GFX stent infringes the limitation of the asserted claims; Cordis has shown that Medtronic AVE's GFX 2 stent infringes the limitation of the asserted claims; Medtronic has not shown that the claims of the patents in suit are invalid due to obviousness; see verdict for further details (fmt,) (Entered: 03/14/2005)

03/14/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial completed on 3/14/2005: Jury Verdict (Court Reporter V. Gunning.) (fmt,) (Entered: 03/14/2005)

03/16/2005 1359 REDACTED VERSION of 1348 Letter to Chief Judge Robinson by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 03/16/2005)

03/16/2005 1360 Letter to The Honorable Sue L. Robinson from Steven J. Balick regarding requesting permission to retrieve exhibit PX2940. (Balick, Steven) (Entered: 03/16/2005)

03/16/2005 1361 ORDER directing that jurors be provided lunch (cc: Finance). Signed by Judge Sue L. Robinson on 3/16/05. (rld,) (Entered: 03/16/2005)

03/16/2005 -- Remark: PX 2940 released to Steven Balick, Esq., Ashby & Geddes (fmt,) (Entered: 03/16/2005)

03/17/2005 1362 Voir Dire To the Jury Panel. (fmt,) (Entered: 03/17/2005)

03/17/2005 1363 Preliminary Jury Instructions. (fmt,) (Entered: 03/17/2005)

03/17/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/17/2005. (Court Reporter V. Gunning.) (fmt,) (Entered: 03/18/2005)

03/18/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/18/2005. (Court Reporter V. Gunning.) (fmt,) (Entered: 03/18/2005)

03/21/2005 1364 MOTION to introduce evidence to rebut Cordis' claims re: commercial success - filed by Boston Scientific Corporation, Scimed Life Systems, Inc.. (Ingersoll, Josy) (Entered: 03/21/2005)

03/21/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/21/2005 (Day 3). (Court Reporter V. Gunning.) (fmt,) (Entered: 03/21/2005)

03/22/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/22/2005 DAY 4. (Court Reporter V. Gunning.) (fmt,) (Entered: 03/22/2005)

03/22/2005 -- 1364 MOTION to introduce evidence to rebut Cordis' claims re: commercial success filed by Boston Scientific Corporation,, Scimed Life Systems, Inc.; Moot in part, Denied in Part during trial on 3/22/05 . Signed by Judge Sue L. Robinson on 3/22/05. (fmt,) (Entered: 03/28/2005)

03/23/2005 -- S. Balick, Esq., Ashby & Geddes returned PX 2940, PX 2958, PX 3243, PX 3692, PX 2353B, PX 2356A, PX 2230A, PX 2916, PX 3262, PX 3790A, PX 3792, PX 2230, PX 3986, PX 3987 to the Court; PX 2940 and PX 3796 admitted into evidence at trial (fmt,) (Entered: 03/23/2005)

03/23/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial held on 3/23/2005 DAY 5. (Court Reporter V. Gunning.) (fmt,) (Entered: 03/28/2005)

03/23/2005 1365 Charge to the Jury (fmt,) (Entered: 03/28/2005)

03/24/2005 -- Minute Entry for proceedings held before Judge Sue L. Robinson : Jury Trial completed on 3/24/2005 DAY 8. (Court Reporter V. Gunning.) (fmt,) (Entered: 03/28/2005)

03/24/2005 1366 JURY VERDICT; Cordis has shown that Boston Scientific's NIR Stent infringes the limitaion of claim 23 of the '762 patent requiring that the wall of a tubular member have a substantially uniform thickness; Boston Scientific has not shown that claim 23 of the '762 patent is invalid due to obviousness(fmt,) (Entered: 03/28/2005)

03/29/2005 1367 ORDER directing that jurors be provided lunch for dates of March 17, 18, and 21-24, 2005 (cc: Finance). Signed by Judge Sue L. Robinson on 3/28/05. (rld,) (Entered: 03/29/2005)

- 03/29/2005 1369 TRANSCRIPT of Jury Trial held on 3/17/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME A (Transcript on file in Clerk's Office) (fmt,) Modified on 4/7/2005 (fmt,). (Entered: 03/31/2005)
- 03/29/2005 1370 TRANSCRIPT of Jury Trial held on 3/18/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME B(Transcript on file in Clerk's Office) (fmt,) Modified on 4/7/2005 (fmt,). (Entered: 03/31/2005)
- 03/29/2005 1371 TRANSCRIPT of Jury Trial held on 3/21/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME C (Transcript on file in Clerk's Office) (fmt,) Modified on 4/7/2005 (fmt,). (Entered: 03/31/2005)
- 03/29/2005 1372 TRANSCRIPT of Jury Trial held on 3/22/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME D(Transcript on file in Clerk's Office) (fmt,) Modified on 4/7/2005 (fmt,). (Entered: 03/31/2005)
- 03/29/2005 1373 TRANSCRIPT of Jury Trial held on 3/23/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME E (Transcript on file in Clerk's Office) (fmt,) Modified on 4/7/2005 (fmt,). (Entered: 03/31/2005)
- 03/30/2005 1368 STIPULATION set filing and briefing deadlines on Boston Scientific Corporation & Scimed Life Systems, Inc.'s renewed motion for judgment as a matter of law and a new trial by Cordis Corporation, Boston Scientific Corporation, Scimed Life Systems, Inc.. (Ingersoll, Josy) (Entered: 03/30/2005)
- 03/31/2005 1374 JUDGMENT in favor of pltf. Cordis Corp. and against deft. Medtronic Vascular, Inc. per jury verdict dated 3/14/2005. Signed by Judge Sue L. Robinson on 3/31/05. (rld,) (Entered: 03/31/2005)
- 03/31/2005 1375 JUDGMENT in favor of ptlf. Cordis Corporation and against defts. Boston Scientific Corporation and Scimed Life Systems, Inc. per jury verdict of March 24, 2005. Signed by Judge Sue L. Robinson on 3/31/05. (rld,) (Entered: 03/31/2005)
- 04/04/2005 -- SO ORDERED, re 1368 Stipulation, filed by Boston Scientific Corporation,, Cordis Corporation,, Scimed Life Systems, Inc.,, Set Briefing Schedule: BSC shall file its renewed motion for JMOL and a new trial with anOpening Brief due 4/19/2005.Answering Brief due 5/5/2005.Reply Brief due 5/19/2005. Signed by Judge Sue L. Robinson on 3/31/05. (rld,) (Entered: 04/04/2005)
- 04/07/2005 1376 TRANSCRIPT of Jury Trial held on 3/24/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME F (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/07/2005)
- 04/07/2005 1377 SEALED TRANSCRIPT of Jury Trial held on 3/24/05 before Judge Robinson. Court Reporter: V. Gunning and L. Dibbs. VOLUME F (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/07/2005)
- 04/07/2005 1378 STIPULATION and order setting dates for post trial documents by Cordis Corporation, Medtronic Vascular, Inc., Medtronic Vascular, Inc., Cordis Corporation, Cordis Corporation, Medtronic Vascular, Inc., Cordis Corporation, Cordis Corporation, Cordis Corporation. (Polizoti, Leslie) (Entered: 04/07/2005)
- 04/11/2005 -- SO ORDERED, re 1378 Stipulation, filed by Cordis Corporation, Medtronic Vascular, Inc., Set Briefing Schedule for post-trial motions: motion due 4/14/05. Opening Brief due 4/19/2005. Answering Brief due 5/5/2005. Reply Brief due 5/19/2005. Signed by Judge Sue L. Robinson on 4/11/05. (rld,) (Entered: 04/11/2005)
- 04/12/2005 1379 Amended STIPULATION TO EXTEND TIME to file Renewed Motion for Judgment as a Matter of Law and/or a New Trial to April 14, 2005 - filed by Boston Scientific Corporation, Scimed Life Systems, Inc.. (Ingersoll, Josy) (Entered: 04/12/2005)
- 04/13/2005 -- SO ORDERED, re 1379 Amended STIPULATION TO EXTEND TIME to file Renewed Motion for Judgment as a Matter of Law and/or a New Trial to April 14, 2005 filed by Boston Scientific Corporation,, Scimed Life Systems, Inc., previously set briefing schedule remains in place. Signed by Judge Sue L. Robinson on 4/13/05. (rld,) (Entered: 04/13/2005)
- 04/14/2005 1380 Jury Trial Exhibit List; Trial Dates 3/4/05, 3/7/05-3/11/05, 3/14/05 (fmt,) (Entered: 04/14/2005)
- 04/14/2005 1381 Jury Trial Exhibit List; Trial Dates: 3/17/05-3/18/05, 3/21/05-3/24/05(fmt,) (Entered: 04/14/2005)
- 04/14/2005 1382 MOTION to Amend/Correct 1375 Judgment - filed by Boston Scientific Corporation, Scimed Life Systems, Inc.. (Keller, Karen) (Entered: 04/14/2005)
- 04/14/2005 1383 MOTION for New Trial On Cordis' Patent Infringement Claims and Medtronic's Invalidity Counterclaims - filed by Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 04/14/2005)
- 04/14/2005 1384 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims - filed by

- Medtronic Vascular, Inc.. (Louden, Karen) (Entered: 04/14/2005)
- 04/14/2005 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed) - filed by Boston Scientific Corporation, Scimed Life Systems, Inc.. (Attachments: # 1 Text of Proposed Order Proposed Order)(Keller, Karen) (Entered: 04/14/2005)
- 04/15/2005 1386 TRANSCRIPT of Jury Trial held on 3/4/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME I (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/15/2005 1387 TRANSCRIPT of Jury Trial held on 3/7/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME II (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/15/2005 1388 TRANSCRIPT of Jury Trial held on 3/8/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME III (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/15/2005 1389 TRANSCRIPT of Jury Trial held on 3/9/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME IV (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/15/2005 1390 TRANSCRIPT of Jury Trial held on 3/10/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME V (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/15/2005 1391 TRANSCRIPT of Jury Trial held on 3/11/05 before Judge Robinson. Court Reporter: Hawkins Reporting Service. VOLUME VI (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/18/2005)
- 04/19/2005 1392 TRANSCRIPT of Jury Trial held on 3/14/05 before Judge Robinson. Court Reporter: V. Gunning. VOLUME VII (Transcript on file in Clerk's Office) (fmt,) (Entered: 04/19/2005)
- 04/19/2005 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC - filed by Cordis Corporation. (Day, John) (Entered: 04/19/2005)
- 04/19/2005 1394 SEALED OPENING BRIEF in Support re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Cordis Corporation. Answering Brief/Response due date per Local Rules is 5/3/2005. (Day, John) (Entered: 04/19/2005)
- 04/19/2005 1395 OPENING BRIEF in Support re 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed) filed by Boston Scientific Corporation. Answering Brief/Response due date per Local Rules is 5/3/2005. (Attachments: # 1 Exhibit Exhibits A through C# 2 Exhibit Exhibits D through H)(Keller, Karen) (Entered: 04/19/2005)
- 04/19/2005 1396 CERTIFICATE OF SERVICE of BSC's Opening Brief In Support of Its Renewed Motion For Judgment As a Matter of Law And, In the Alternative, For a New Trial by Boston Scientific Corporation re 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed), 1395 Opening Brief in Support, (Keller, Karen) (Entered: 04/19/2005)
- 04/19/2005 1397 OPENING BRIEF in Support re 1384 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims filed by Medtronic Vascular, Inc.. Answering Brief/Response due date per Local Rules is 5/3/2005. (Louden, Karen) (Entered: 04/19/2005)
- 04/19/2005 1398 OPENING BRIEF in Support re 1383 MOTION for New Trial On Cordis' Patent Infringement Claims and Medtronic's Invalidity Counterclaims filed by Medtronic Vascular, Inc.. Answering Brief/Response due date per Local Rules is 5/3/2005. (Attachments: # 1 # 2)(Louden, Karen) (Entered: 04/19/2005)
- 04/26/2005 1399 REDACTED VERSION of 1394 Opening Brief in Support of Cordis' Motion to Reinstate and Update the Damage Verdicts Against AVE and BSC by Cordis Corporation. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10)(Day, John) (Entered: 04/26/2005)
- 04/28/2005 1400 Cross MOTION to Amend/Correct the Judgment - filed by Cordis Corporation. (Balick, Steven) (Entered: 04/28/2005)
- 04/28/2005 1401 BRIEF (Combined Opening and Answering) re 1400 Cross MOTION to Amend/Correct the Judgment, Answering Brief/Response due date per Local Rules is 5/12/2005. Answering Brief in Opposition to D.I. 1382; Reply Brief due date per Local Rules is 5/5/2005. Modified on 4/29/2005 (fmt,). (Entered: 04/28/2005)
- 04/29/2005 1402 Letter to S. Balick, Esq, J. Ingersoll, Esq, and K. Jacobs Louden, Esq from Judge Robinson regarding jury question and response; practice of chambers is to retrieve jury notes and maintain them as court exhibits; attaching under seal a copy of the jury question and response at issue. (fmt,) (Entered: 04/29/2005)
- 04/29/2005 1403 SEALED COURT EXHIBIT (jury question and response) re 1402 Letter (fmt,) (Entered: 04/29/2005)

04/29/2005)

04/29/2005 -- CORRECTING ENTRY: The text of D.I. 1401 has been corrected; D.I. 1401 is an Opening and Answering Brief; has been linked to D.I. 1400 and 1382 (fmt,) (Entered: 04/29/2005)

04/29/2005 1404 STIPULATION TO EXTEND TIME response to Cordis' Motion To Reinstate And Update The Damages Verdicts Against AVE and BSC (D.I. 1393, 1394) to May 17, 2005 - filed by Medtronic Vascular, Inc.. (Polizoti, Leslie) (Entered: 04/29/2005)

05/03/2005 1405 ANSWERING BRIEF in Opposition re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Boston Scientific Corporation, Scimed Life Systems, Inc..Reply Brief due date per Local Rules is 5/10/2005. (Attachments: # 1 Exhibit A and B# 2 Exhibit Exhibit C part 1 of 2# 3 Exhibit C Part 2 of 2# 4 Exhibit D through F)(Keller, Karen) (Entered: 05/03/2005)

05/03/2005 -- SO ORDERED, re 1404 STIPULATION TO EXTEND TIME response to Cordis' Motion To Reinstate And Update The Damages Verdicts Against AVE and BSC (D.I. 1393, 1394) to May 17, 2005 filed by Medtronic Vascular, Inc.,, Set Briefing Schedule: Answering Brief due 5/17/2005. Signed by Judge Sue L. Robinson on 5/3/05. (rld,) (Entered: 05/03/2005)

05/04/2005 1406 STIPULATION File Reply Brief in Support of BSC's Motion and Answering Brief to Cordis's Motion on May 12, 2005 by Boston Scientific Corporation, Scimed Life Systems, Inc., Boston Scientific Corporation, Scimed Life Systems, Inc.. (Keller, Karen) (Entered: 05/04/2005)

05/05/2005 1407 ANSWERING BRIEF in Opposition re 1384 MOTION for Judgment as a Matter of Law On Cordis' Patent Infringement Claims, 1383 MOTION for New Trial On Cordis' Patent Infringement Claims and Medtronic's Invalidity Counterclaims filed by Cordis Corporation.Reply Brief due date per Local Rules is 5/12/2005. (Attachments: # 1 Exhibit A and B# 2 Exhibit C)(Day, John) (Entered: 05/05/2005)

05/05/2005 1408 ANSWERING BRIEF in Opposition re 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed) on Infringement and Validity of Claim 23 of the Palmaz '762 Patent filed by Cordis Corporation.Reply Brief due date per Local Rules is 5/12/2005. (Attachments: # 1 Exhibit A and B)(Balick, Steven) (Entered: 05/05/2005)

05/06/2005 -- SO ORDERED, re 1406 Stipulation, filed by Boston Scientific Corporation,, Scimed Life Systems, Inc.,, Set Briefing Schedule: Answering Brief due 5/12/2005 re D.I. 1400; and Reply Brief due 5/12/2005 re D.I. 1382. Signed by Judge Sue L. Robinson on 5/5/05. (rld,) (Entered: 05/06/2005)

05/10/2005 1409 STIPULATION and order extending the deadline by which Cordis' reply brief shall be due in support of its motion to reinstate and update the damages verdict (D.I. 1393) against BSC, and the deadline by which BSC's reply brief shall be due in support of its renewed motion for judgment as a matter of law and, in the alternative, for a new trial (D.I. 1385), by Cordis Corporation. (Balick, Steven) (Entered: 05/10/2005)

05/11/2005 -- SO ORDERED, re 1409 Stipulation, filed by Cordis Corporation,, Set Briefing Schedule: Reply Brief due 5/17/2005 to D.I. 1393 and Reply Brief due 5/25/05 to D.I. 1385. Signed by Judge Sue L. Robinson on 5/11/05. (rld,) (Entered: 05/11/2005)

05/11/2005 -- Set Briefing Schedule: Reply Brief due 5/25/2005 to D.I. 1385 per court's granting D.I. 1409. (rld,) (Entered: 05/11/2005)

05/12/2005 1410 REPLY BRIEF to Motion re 1382 MOTION to Amend/Correct 1375 Judgment, and ANSWERING BRIEF to 1400 Cross MOTION to Amend/Correct the Judgment BSC's Combined Reply Brief in Support of BSC's Motion to Amend the Judgment and Answering Brief In Opposition to Cordis's Cross-Motion to Amend the Judgment filed by Boston Scientific Corporation. (Attachments: # 1 Exhibits A-C# 2 Exhibits D&E# 3 Certificate of Service)(Keller, Karen) Modified on 5/12/2005 (fmt,). (Entered: 05/12/2005)

05/12/2005 -- (See D.I. 1410 for this brief) ANSWERING BRIEF in Opposition re 1400 Cross MOTION to Amend/Correct the Judgment filed by Boston Scientific Corporation.Reply Brief due date per Local Rules is 5/19/2005. (fmt,) (Entered: 05/12/2005)

05/17/2005 1411 SEALED ANSWERING BRIEF in Opposition re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Medtronic Vascular, Inc..Reply Brief due date per Local Rules is 5/24/2005. (Polizoti, Leslie) (Entered: 05/17/2005)

05/17/2005 1412 REPLY BRIEF re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Cordis Corporation. (Attachments: # 1 Exhibit A and B# 2 Exhibit C# 3 Exhibit D with certificate of service)(Day, John) (Entered: 05/17/2005)

05/17/2005 1413 SEALED DECLARATION re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC, 1412 Reply Brief by Cordis Corporation. (Day, John) (Entered: 05/17/2005)

05/19/2005 1414 REPLY BRIEF Medtronic Vascular Inc.'s Combined Reply Brief In Support Of Its Motion For

Judgment As A Matter Of Law On Cordis Corporation's Patent Infringement Claims And Its Motion For A New Trial (D.I. Nos. 1384 and 1385) filed by Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Attachments: # 1)(Louden, Karen) Modified on 5/20/2005 (fmt,). (Entered: 05/19/2005)

- 05/19/2005 1415 REPLY BRIEF re 1400 Cross MOTION to Amend/Correct the Judgment filed by Cordis Corporation. (Attachments: # 1 Exhibit A-D)(Balick, Steven) (Entered: 05/19/2005)
- 05/24/2005 1416 STIPULATION TO EXTEND TIME by which Cordis Corporation's reply brief is due in support of its motion to reinstate and update the damages verdict against Medtronic Vascular, Inc. to May 27, 2005 - filed by Cordis Corporation. (Balick, Steven) (Entered: 05/24/2005)
- 05/24/2005 1417 REDACTED VERSION of 1413 Declaration of Creighton G. Hoffman by Cordis Corporation. (Day, John) (Entered: 05/24/2005)
- 05/24/2005 1418 REDACTED VERSION of 1411 Answering Brief in Opposition To Cordis Corporation's Motion To Reinstate And Update The Damages Verdict Against AVE And BSC by Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Attachments: # 1 # 2 # 3 # 4 # 5 # 6 # 7 # 8 # 9)(Polizoti, Leslie) (Entered: 05/24/2005)
- 05/25/2005 -- SO ORDERED, re 1416 STIPULATION TO EXTEND TIME by which Cordis Corporation's reply brief is due in support of its motion to reinstate and update the damages verdict against Medtronic Vascular, Inc. to May 27, 2005 filed by Cordis Corporation,, Set Briefing Schedule: Reply Brief due 5/27/2005.. Signed by Judge Sue L. Robinson on 5/25/05. (rld,) (Entered: 05/25/2005)
- 05/25/2005 1419 REPLY BRIEF re [192] 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed) filed by Boston Scientific Corporation, Scimed Life Systems, Inc., Boston Scientific Corporation, Scimed Life Systems, Inc.. (Attachments: # 1 Exhibit A)(Keller, Karen) Modified on 5/31/2005 (fmt,). (Entered: 05/25/2005)
- 05/26/2005 1420 NOTICE of request for oral argument on renewed motion for judgment as a matter of law and, in the alternative, for a new trial by Boston Scientific Corporation, Scimed Life Systems, Inc., Boston Scientific Corporation, Scimed Life Systems, Inc. re 1408 Answering Brief in Opposition,, 1385 MOTION for Judgment as a Matter of Law and, in the Alternative, for a New Trial (Renewed), 1395 Opening Brief in Support,, 1419 Reply Brief, (Keller, Karen) (Entered: 05/26/2005)
- 05/27/2005 1421 SEALED REPLY BRIEF re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC filed by Cordis Corporation. (Day, John) (Entered: 05/27/2005)
- 05/27/2005 1422 SEALED DECLARATION re 1421 Reply Brief, 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC by Cordis Corporation. (Day, John) (Entered: 05/27/2005)
- 05/31/2005 1423 REQUEST for Oral Argument by Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc., Medtronic Vascular, Inc.. (Polizoti, Leslie) (Entered: 05/31/2005)
- 06/03/2005 1424 Letter to Rosanna DiMeo from John G. Day regarding replacement of declaration. (Attachments: # 1 Declaration of Creighton G. Hoffman)(Day, John) (Entered: 06/03/2005)
- 06/07/2005 1425 REDACTED VERSION of 1422 Declaration of Creighton G. Hoffman by Cordis Corporation. (Day, John) (Entered: 06/07/2005)
- 06/08/2005 1426 REDACTED VERSION of 1421 Reply Brief, [319] Reply Brief in Support of Cordis' Motion to Reinstate the Damages Verdict Against AVE and Award Prejudgment Interest by Cordis Corporation, Johnson and Johnson. (Attachments: # 1 Exhibit 1 part 1# 2 Exhibit 1 part 2# 3 Exhibit 2 part 1# 4 Exhibit 2 part 2# 5 Exhibit 2 part 3# 6 Exhibit 2 part 4# 7 Exhibit 2 part 5# 8 Exhibit 2 part 6# 9 Exhibit 3# 10 Exhibit 4 part 1# 11 Exhibit 4 part 2# 12 Exhibit 4 part 3)(Day, John) (Entered: 06/08/2005)
- 06/29/2005 1427 Supplemental ANSWERING BRIEF in Opposition re 1393 MOTION to reinstate and update the damage verdicts against AVE and BSC Medtronic Vascular Inc.'s Supplement To D.I. 1411, Its Answering Brief In Opposition To Cordis' Motion To Reinstate And Update The Damages Verdict Against AVE and BSC filed by Medtronic Vascular, Inc., Medtronic Vascular, Inc..Reply Brief due date per Local Rules is 7/7/2005. (Polizoti, Leslie) (Entered: 06/29/2005)

261 F.3d 1329, *; 2001 U.S. App. LEXIS 17420, **;
59 U.S.P.Q.2D (BNA) 1801

Time of Request: August 24, 2005 09:03 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

1 of 10 DOCUMENTS

**ADVANCED CARDIOVASCULAR SYSTEMS, INC. and GUIDANT SALES
CORPORATION, Plaintiffs-Appellants, v. SCIMED LIFE SYSTEMS, INC. and
BOSTON SCIENTIFIC CORPORATION, Defendants-Appellees.**

00-1454

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

261 F.3d 1329; 2001 U.S. App. LEXIS 17420; 59 U.S.P.Q.2D (BNA) 1801

August 6, 2001, Decided

SUBSEQUENT HISTORY: [**1] As Corrected August 14, 2001.

PRIOR HISTORY: Appealed from: United States District Court for the Southern District of Indiana. Judge David F. Hamilton.

DISPOSITION: AFFIRMED-IN-PART, VACATED-IN-PART, and REMANDED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs appealed the decision of the United States District Court for the Southern District of Indiana granting summary judgment in favor of defendants in plaintiffs' suit for patent infringement.

OVERVIEW: The asserted claims were directed to a flexible coronary stent, methods for using the stent, and a process for making it. The court vacated the district court's grant of summary judgment of non-infringement with respect to certain claims because the grant was based on an erroneous construction of the term "connecting elements," and the similar terms "interconnected," "connecting members," and "struts for connecting." The district court erred in construing these terms as requiring that the stent's connecting elements be parallel both to each other and to the longitudinal axis of the stent. The court also vacated the grant of summary judgment of non-infringement with respect to certain other claims. It did so because the district court erred in construing the phrase "generally parallel connecting elements" to re-

quire the connecting elements to be generally parallel to the stent's longitudinal axis, and because it was unclear, from the intrinsic evidence, under what frame of reference the claims require the connecting elements to be generally parallel to each other. The court affirmed, however, the grant of summary judgment of non-infringement as to certain claims.

OUTCOME: The court vacated in part, affirmed in part, and remanded.

LexisNexis(R) Headnotes

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN1] Any construction, by a district court or the appellate court, of a claim term that is not at issue is merely dictum, and therefore has no issue preclusive effect.

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN2] Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The appellate court reviews a grant of summary judgment without deference. In addition, the appellate court must, as the district court was required to do, draw all reasonable factual inferences in favor of the nonmovant.

Patent Law > Infringement Actions > Burdens of Proof

Patent Law > Infringement Actions > Doctrine of Equivalents > General Overview***Patent Law > Infringement Actions > Claim Interpretation > Fact & Law Issues***

[HN3] Determination of a claim of infringement involves a two step inquiry. First, the claims are construed, a question of law in which the scope of the asserted claims is defined. Second, the claims, as construed, are compared to the accused device. This is a question of fact. To prevail, the plaintiff must establish by a preponderance of the evidence that the accused device infringes one or more claims of the patent either literally or under the doctrine of equivalents.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN4] The starting point for any claim construction must be the claims themselves.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN5] Claims must be read in view of the specification, of which they are a part. However, while it is true that claims are to be interpreted in light of the specification and with a view to ascertaining the invention, it does not follow that limitations from the specification may be read into the claims.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN6] Mere inferences drawn from the description of an embodiment of the invention cannot limit claim terms.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN7] The prosecution history is often of critical significance in determining the meaning of the claims, since it may be used to determine the scope and meaning of the claims.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN8] When intrinsic evidence is insufficient to enable the court to determine the meaning of the asserted claims, resort may be had to extrinsic evidence.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN9] On remand, the district court may consider extrinsic evidence, such as expert testimony, inventor testimony, dictionaries, and technical treatises and articles in order to determine in what manner the connecting elements should be "generally parallel" to each other.

COUNSEL: Richard A. Bardin, Fulwider Patton Lee & Utecht, LLP, of Los Angeles, California, argued for plaintiffs-appellants. With him on the brief were Craig B. Bailey and James Juo. Of counsel on the brief were Harvey Kurzweil, Clark E. Walter, Aldo A. Badini, and Bradford J. Badke, Dewey Ballantine LLP, of New York, New York.

Walter E. Hanley, Jr. Kenyon & Kenyon, of New York, New York, argued for defendants-appellees. With him on the brief were Charles R. Brainard, Douglas E. Ringel, and Reem F. Jishi. Of counsel were Paul H. Heller, of New York, New York; and Mark Michael Supko, of Washington, DC.

JUDGES: Before MICHEL, Circuit Judge, ARCHER, Senior Circuit Judge, and SCHALL, Circuit Judge.

OPINIONBY: SCHALL

OPINION: [*1331]

SCHALL, Circuit Judge.

Advanced Cardiovascular Systems, Inc. and Guidant Sales Corp. (collectively, "ACS") appeal the decision of the United States District Court for the Southern District of Indiana granting summary judgment in favor of Scimed Life Systems, Inc. and Boston Scientific Corporation (collectively, "Scimed") [**2] in ACS's suit against Scimed for patent infringement. *Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, No. 98-1108 (S.D. Ind. June 28, 2000) ("Adv. Cardiovascular IV"). The district court ruled that Scimed was entitled to summary judgment that it did not infringe the asserted claims of United States Patent Nos. 5,421,955 (the "'955 patent"), 5,514,154 (the "'154 patent"), 5,603,721 (the "'721 patent"), 5,728,158 (the "'158 patent"), and 5,735,893 (the "'893 patent"). *Id.* The patents at issue relate to a flexible coronary stent that is adapted to be placed in a patient's blood vessel, expand, and then stay expanded, thereby keeping the involved segment of the vessel open. The asserted claims are directed to the stent, methods for using the stent, and a process for making the stent.

We vacate the district court's grant of summary judgment of non-infringement with respect to claims 11 and 12 of the '955 patent, claims 1-4, 9, and 23 of the '154 patent, claims 1-4 of the '721 patent, and claims 1, 2, 5, 6, 9, and 11-13 of the '158 patent, because the grant of summary judgment was based on an erroneous construction of the term "connecting elements," and the similar [**3] terms "interconnected," "connecting members," and "struts for connecting." The court erred in construing these terms as requiring that the stent's connecting elements be parallel both to each other and to the

longitudinal axis of the stent. We also vacate the district court's grant of summary judgment of non-infringement with respect to claims 12-15, 17, 18, and 20 of the '154 patent. We do so because the court erred in construing the phrase "generally parallel connecting elements" to require the connecting elements to be generally parallel to the stent's longitudinal axis, and because it is unclear, from the intrinsic evidence, under what frame of reference the claims require the connecting elements to be generally parallel to each other. We affirm, however, the district court's grant of summary judgment of non-infringement with respect to claims 10 and 21 of the '154 patent, claims 14-16, 19, and 20 of the '158 patent, and claims 1, 2, and 4-13 of the '893 patent. The case is remanded to the district court for further proceedings.

BACKGROUND

I.

The '955, '154, '721, '158, and '893 patents all are assigned to ACS. Each patent relates back to two original abandoned applications, [**4] Application No. 07/783,558 (the " '558 application"), filed on October 28, 1991, and Application No. 08/164,986 (the " '986 application"), filed on December 9, 1993. Since they all are related to the '558 and '986 applications, the patents have similar specifications and drawings.

The '154 patent's specification and drawings are representative of the specifications and drawings of all of the patents in suit. The '154 patent is directed to "an expandable stent which is relatively flexible [**1332] along its longitudinal axis to facilitate delivery through a blood vessel, but which is stiff and stable enough radially in an expanded condition to maintain" free passage through a vessel in which the invention is implanted. '154 patent, col. 1, ll. 53-58. The stent 10 is depicted below in Figures 3 and 4 of the '154 patent.

SEE FIGURE 3 AND FIGURE 4 IN ORIGINAL

Figure 3 shows the stent 10 inside an artery 15. Id. at col. 5, ll. 11-28. The specification describes stent 10 as having a "plurality of radially expandable cylindrical elements," identified as 12 in Figures 3 and 4, that can each "expand and . . . flex relative to one another." Id. at col. 1, ll. 59-62. "Interconnecting elements [**5] or struts," also called "connecting elements" and identified as 13 in Figures 3 and 4, "extend . . . between adjacent cylindrical elements" and "provide increased stability and a preferable position to prevent warping of the stent upon the expansion thereof." Id. at col. 1, l. 65 - col. 2, l. 1. The stent is placed on a balloon or other expandable member. Thereafter, once the stent is placed at the desired location in a blood vessel, the balloon is inflated, the stent expands, and the balloon is removed, leaving the stent in its

expanded state, against the blood vessel's walls 15, as shown in Figure 3. Id. at col. 4, l. 57 - col. 5, l. 10.

The '154 patent notes that "preferably, all of the interconnecting elements of the stent are joined at either the peaks or the valleys of the undulating structure of the cylindrical elements In this manner there is no shortening of the stent upon expansion." Id. at col. 2, l. 67 - col. 3, l. 4; see also id. at col. 5, ll. 42-51. This configuration is demonstrated in Figures 3 and 4 of the '154 patent, shown above.

Claim 1 of the '154 patent is directed to the stent itself, and is representative of the apparatus claims asserted [**6] by ACS. Claim 1 reads:

1. A longitudinally flexible stent for implanting in a body lumen, comprising:

a plurality of cylindrical elements which are independently expandable in the radial direction and which are interconnected [**1333] so as to be generally aligned on a common longitudinal axis;

a plurality of connecting elements for interconnecting said cylindrical elements, said connecting elements configured to interconnect only said cylindrical elements that are adjacent to each other; and

an outer wall surface on said cylindrical elements, said outer wall surface being smooth prior to expansion of said stent and forming a plurality of outwardly projecting edges which form as said stent is expanded radially outwardly from a first diameter to a second, enlarged diameter.

Id. at col. 8, ll. 36-52. Independent claim 12 differs from claim 1, describing "a plurality of generally parallel connecting elements" Id. at col. 9, l. 28 (emphasis added).

The '154 patent is a descendant of the '558 application. The '558 application included claims directed to an expandable, flexible stent, a method of using the stent, a process for making the stent, and [**7] a kit that included the stent. Some of the '558 application's claims were rejected as being anticipated by United States Patent No. 5,102,417, which was issued to Julio C. Palmaz (the "Palmaz '417 patent"). The '558 application's claims were amended in response to the rejection, but the examiner maintained his rejection based on the Palmaz '417 patent.

The '986 application was filed as a continuation of the '558 application. Eventually, a preliminary amend-

ment to the '986 application was filed, amending certain claims of the application to recite "a plurality of generally parallel connecting elements for interconnecting said cylindrical elements . . ." (emphasis added). The inventors argued that the amended claims were patentable over the Palmaz '417 patent. The examiner maintained his rejection, however. The '154 patent then was filed as a continuation-in-part of the '986 application, and the '986 application was abandoned. The '154 patent's claims, directed to an expandable, flexible stent, were allowed. Most of the asserted claims of the '154 patent, such as independent claim 1, simply recite "connecting elements," see '154 patent, col. 8, ll. 36, 52, while other asserted [**8] claims, independent claim 12 for example, recite "generally parallel connecting elements," see id. at col. 9, ll. 23-33.

The '955 patent was filed as a continuation of the '558 application, and the '558 application then was abandoned. The '955 patent's claims are directed to a process for making the expandable, flexible stent. n1 Claims 11 and 12 of the '955 patent, the asserted claims, describe the claimed cylindrical elements as being "interconnected," but do not expressly describe the interconnections as being "parallel." '955 patent, col. 8, l. 57 - col. 9, l. 10.

n1 The '955 patent was subject to a reexamination, but the two claims asserted by ACS in this case, claims 11 and 12, were allowed, unamended, at the conclusion of the reexamination.

The '721 patent was filed as a divisional of the '154 patent; it claims a method for using the expandable, flexible stent. The asserted claims of the '721 patent describe the stent as having cylindrical elements that are "interconnected." However, like the asserted [**9] claims of the '955 patent, they do not state that the interconnections are "parallel." '721 patent, col. 8, l. 33 - col. 10, l. 6.

The '158 patent was filed as a divisional of the '721 patent; its claims are directed to an expandable, flexible stent. Most of the '158 patent claims that ACS asserts against Scimed recite a "longitudinally flexible stent" that has a "plurality of connecting elements." '158 patent, col. 8, l. 47 - col. 10, l. 52. Asserted dependent [*1334] claim 2, however, recites a stent in claim 1 "wherein said connecting elements are generally parallel to each other," id. at col. 8, ll. 64-65. At the same time, claim 4, which also depends from claim 1 but is not asserted, describes a stent "wherein said connecting elements are generally parallel to the common longitudinal axis of said cylindrical elements," id. at col. 9, ll. 1-3.

The '893 patent was filed as a divisional of the '721 patent; its claims are directed to an expandable, flexible stent. The '893 patent's claims recite "connecting members" or "struts for connecting" that join the stent's cylindrical elements. '893 patent, col. 8, l. 32 - col. 10, l. 19. None of the asserted claims of the '893 patent modify [**10] these terms with the phrase "generally parallel." Id.

The accused device that is made by Scimed, the NIR stent, is an expandable, flexible coronary stent. The NIR stent is shown below.

SEE ILLUSTRATION IN ORIGINAL

Relevant to the district court's grant of summary judgment of non-infringement, the NIR stent's connecting elements are not straight, such as those seen in Figures 3 and 4 of the '154 patent, but curved vertical loops or U's. These curved connecting elements attach to the peaks or valleys of the horizontal loops that comprise the body of the NIR stent.

II.

In the district court, ACS alleged that Scimed infringed claims 11 and 12 of the '955 patent, claims 1-4, 9, 10, 12-15, 17, 18, 20, 21, and 23 of the '154 patent, claims 1-4 of the '721 patent, claims 1, 2, 5, 6, 9, 11-16, 19, and 20 of the '158 patent, and claims 1, 2, and 4-13 of the '893 patent by manufacturing and selling its NIR stent. The parties first asked the court to construe certain terms in the asserted claims. In response, the court construed the asserted claims, adopting ACS's proposed construction of "connecting element," construing the term to mean "an element of the stent that connects adjacent [**11] cylindrical elements." *Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, No. 98-1108, slip op. at 16-17 (S.D. Ind. Oct. 15, 1999) ("*Adv. Cardiovascular I*"). The court construed the phrase "generally parallel connecting elements" in independent claim 12 of the '154 patent to mean that the connecting elements must be parallel both to each other and to the stent's longitudinal axis. Id. at 25-27. In addition, the court determined that dependent claim 2 of the '158 patent explicitly required the connecting elements to be generally parallel to each other. Id. at 26-27. Finally, the court construed the phrase "a plurality of outwardly projecting edges" in claims 1 and 23 of the '154 patent, and similar phrases in claim 1 of the '721 patent and claims 1 and 14 of the '158 patent, to mean "a number of U-, W-, and Y-shaped members of the cylindrical elements." n2 Id. at 23-24.

n2 ACS argues that the district court's construction of "projecting edges" is erroneous. However, the construction of this term did not

form the basis for any judgment of non-infringement by the district court. Since this claim construction is irrelevant to the judgment that is on appeal, we will not address whether the construction was correct. See *Phonometrics, Inc. v. N. Telecom Inc.*, 133 F.3d 1459, 1464, 45 U.S.P.Q.2D (BNA) 1421, 1425 (Fed. Cir. 1998) (noting that [HN1] any construction, by a district court or this court, of a claim term that is not at issue is "merely dictum, and therefore has no issue preclusive effect").

[**12] [*1335]

Scimed then moved for a supplemental claim construction, asking, in part, that the district court limit the term "connecting element" in the asserted claims to a "connector that is generally parallel to the longitudinal axis of the stent." *Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 2000 U.S. Dist. LEXIS 7206, *1, No. 98-1108, slip op. at 1-2 (S.D. Ind. Feb. 9, 2000) ("Adv. Cardiovascular II"). The district court granted the request and adopted Scimed's proposed construction, focusing on statements by the inventors during prosecution relating to the Palmaz '417 patent. *Id.* at 4-5. The court also noted that "if the connecting elements claimed in the asserted patents must all be generally parallel to the longitudinal axis, they should all be generally parallel to each other." *Id.* at 5 n.2. We interpret this footnote to mean that the district court construed the term "connecting element" to require the connecting elements to be generally parallel both to each other and to the longitudinal axis of the stent.

Scimed then moved for summary judgment of non-infringement with respect to the asserted claims. In due course, the district court granted summary judgment of non-infringement, [*13] either literal or by equivalents, of claims 12-15, 17, 18, and 20 of the '154 patent on the ground that the NIR stent did not have connecting elements that were "generally parallel," as required by the claims. *Adv. Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 2000 U.S. Dist. LEXIS 7206, No. 98-1108, slip op. at 7-12 (S.D. Ind. Feb. 9, 2000) ("Adv. Cardiovascular III"). The court noted that the connecting elements of the NIR stent were not generally parallel to each other, because, when the curved or U shaped connecting elements on opposite sides of the NIR stent were compared, they were "not aligned in the same manner." *Id.* at 8. Rather, they were seen to "run in opposite directions, like, as defendants put it, a smile and a frown." *Id.* The court also noted that the NIR stent's connecting elements were not generally parallel to the stent's longitudinal axis because they were curved and therefore could not be parallel to that axis. *Id.* at 9-10. The court stated that ACS had failed to present any evidence explaining

how the NIR stent's connecting elements, which were non-parallel, were equivalent to the claimed "generally parallel connecting elements." *Id.* at 10-12. Concluding, based [*14] on the NIR stent's lack of substantially U-shaped members, that the NIR stent also did not fall within the scope of the '893 patent's claims, the court granted summary judgment of no literal infringement, or infringement under the doctrine of equivalents, of claims 1, 2, and 4-13 of the '893 patent in favor of Scimed. n3 *Id.* at 16-17. The court also granted summary judgment of non-infringement of claims 10 and 21 of the '154 patent, which require the stent to be formed of a single piece of tubing, and claims 14-16, 19, and 20 of the '158 patent, which require the stent's cylindrical elements to have "a width," *id.* at 17, because, as the district court noted, ACS represented to the court that it would not assert infringement of those claim limitations, *id.* at 3. n4

n3 ACS does not appeal the grant of summary judgment relating to the '893 patent. Accordingly, the district court's judgment of non-infringement of claims 1, 2, and 4-13 of the '893 patent, the asserted claims of that patent, is left undisturbed.

n4 ACS does not appeal this finding. Accordingly, the district court's judgment of non-infringement of claims 10 and 21 of the '154 patent and claims 14-16, 19, and 20 of the '158 patent also is left undisturbed.

[**15]

ACS then asked the district court to reconsider its construction of "connecting elements," while Scimed requested that the court, based upon its construction of "connecting elements," grant summary judgment of non-infringement of all of the [*1336] claims asserted by ACS. The district court denied ACS's motion for reconsideration, reaffirming its construction of "connecting elements." *Adv. Cardiovascular IV*, slip op. at 7-8. In so doing, the court pointed to the fact that the only embodiment in the asserted patents depicts the connecting elements as generally parallel to the stent's longitudinal axis. *Id.* The district court also based its construction on statements made by the inventors regarding the Palmaz '417 patent during the prosecution of the '986 application, concluding that the inventors described their invention, not just the claims of the '986 application, as superior to the Palmaz '417 patent because it had connecting elements that were generally parallel to the stent's longitudinal axis. *Id.* at 8-10. The court applied its construction of connecting elements to the term "interconnected" in the '955 and '721 patents, and to the terms "connecting members" and "struts [*16] for connecting" in the '893

patent because all of those terms refer to the means for connecting the described stent's cylindrical elements. Id. at 10-11.

Based on its construction of the term "connecting elements," the district court granted Scimed's motion for summary judgment, finding that the NIR stent did not infringe, either literally or under the doctrine of equivalents, any of the asserted claims because the stent's connecting elements are not generally parallel both to each other and the stent's longitudinal axis. Id. at 11-12. The court therefore entered judgment in favor of Scimed. ACS now appeals. We have jurisdiction pursuant to 28 U.S.C. § 1295 (a)(1) (1994).

DISCUSSION

I.

[HN2] Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 806-07, 53 U.S.P.Q.2D (BNA) 1289, 1297 (Fed. Cir. 1999); *Wolf v. Northwest Ind. Symphony Soc'y*, 250 F.3d 1136, 1141 (7th Cir. 2001). [**17] We review a grant of summary judgment without deference. *Conroy v. Reebok, Int'l, Ltd.*, 14 F.3d 1570, 1575, 29 U.S.P.Q.2D (BNA) 1373, 1377 (Fed. Cir. 1994). In addition, we must, as the district court was required to do, draw all reasonable factual inferences in favor of the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986); *Semiconductor Energy Lab. Co. v. Samsung Elecs. Co.*, 204 F.3d 1368, 1378, 54 U.S.P.Q.2D (BNA) 1001, 1008 (Fed. Cir. 2000).

[HN3] Determination of a claim of infringement involves a two step inquiry. First, the claims are construed, a question of law in which the scope of the asserted claims is defined. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1454-56, 46 U.S.P.Q.2D (BNA) 1169, 1172-74 (Fed. Cir. 1998) (en banc). Second, the claims, as construed, are compared to the accused device. Id. This is a question of fact. *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1346, 51 U.S.P.Q.2D (BNA) 1385, 1389 (Fed. Cir. 1999). To prevail, the plaintiff must establish by a preponderance of the evidence that the accused device infringes one or more claims of the patent [**18] either literally or under the doctrine of equivalents. Id.

II.

We address first the parties' contentions with respect to the remaining asserted claims that do not have any

reference to a parallel relationship as far as the "connecting elements" are concerned. Those claims are claims 11 and 12 of the '955 patent, claims 1-4, 9, and 23 of the [*1337] '154 patent, claims 1-4 of the '721 patent, and claims 1, 2, 5, 6, 9, and 11-13 of the '158 patent. n5 As seen above, the district court construed the term "connecting elements" in the '154 and '158 patents to require the connecting elements to be generally parallel both to each other and to the longitudinal axis of the stent. Adv. Cardiovascular III, slip op. at 5-6. The court applied this construction to the term "interconnected" in the asserted claims of the '955 and '721 patents and to the terms "connecting members" and "struts for connecting" in the '893 patent. n6 Adv. Cardiovascular IV, slip op. at 8-9. Based on this construction, the district court concluded that the NIR stent did not infringe any of the asserted claims because the NIR stent's connecting elements were not parallel both to each other and to the stent's longitudinal [**19] axis. Id. at 11-12.

n5 We note that claim 2 of the '158 patent specifically requires the connecting elements be "generally parallel to each other." '158 patent, col. 8, ll. 64-65. However, the district court granted summary judgment of non-infringement of this claim based on its construction of the term "connecting elements" alone. Adv. Cardiovascular IV, slip op. at 11-12. Therefore, we will handle summary judgment of non-infringement of claim 2 of the '158 patent in this part of the opinion, which discusses the construction of "connecting elements" and the grant of summary judgment based on the construction of that term.

n6 As noted above, ACS does not appeal the grant of summary judgment of non-infringement relating to the '893 patent.

ACS argues that the district court erred in its claim construction. It asserts that none of the asserted patents ascribe any significance to the orientation of the claimed connecting elements in relation to each other or to the stent's longitudinal axis. ACS notes [**20] that the phrase "generally parallel" appears nowhere in the specification, and only appears in some of the asserted claims, specifically independent claim 12, and dependent claims 13-15, 17, 18, and 20 of the '154 patent and dependent claim 2 of the '158 patent. ACS points out that only the drawings of the asserted patents show the connecting elements generally parallel both to each other and the stent's longitudinal axis, and it contends that such a limitation, that only appears in the drawings, should not be read into the claims. ACS also contends that the district court gave too much weight to statements made during

the prosecution of the '986 application because the '986 application specifically claimed "generally parallel connecting elements."

Scimed responds that the district court's claim construction was proper. Scimed argues that the only embodiments disclosed in the asserted patents depict the connecting elements in parallel alignment both with each other and with the stent's longitudinal axis. Scimed also argues that the asserted patents emphasize the longitudinal orientation of the connecting elements and the fact that this orientation prevents shortening and deformation [**21] of the stent upon expansion. In light of these teachings in the specification, Scimed asserts, the district court properly limited the described connecting elements to connecting elements that are generally parallel both to each other and to the stent's longitudinal axis. Scimed also argues that the inventors expressly disclaimed non-parallel connecting elements during prosecution by indicating that the "invention," not just the claims in the '986 application, was distinguishable from the Palmaz '417 patent because the Palmaz '417 patent disclosed connectors that were not parallel to the stent's longitudinal axis and therefore deformed upon expansion.

We agree with ACS that the district court erred in construing "connecting elements" and the similar terms "interconnected," "connecting members," and [*1338] "struts for connecting" by requiring the stent's connecting elements to be generally parallel both to each other and to the stent's longitudinal axis. We reach this conclusion based on the intrinsic evidence of record--the claims, the specification, and the prosecution history, *Vitronics Corp. v. Conceptiontronic, Inc.*, 90 F.3d 1576, 1582, 39 U.S.P.Q.2D (BNA) 1573, 1576 (Fed. Cir. 1996). [**22]

We begin our analysis with the claim language. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 U.S.P.Q.2D (BNA) 1161, 1165 (Fed. Cir. 1999) ("[HN4] The starting point for any claim construction must be the claims themselves."). In that regard, none of the claims presently under discussion require the recited "connecting elements," "interconnected" members, "connecting members," or "struts for connecting," to be "generally parallel" both to each other and to the stent's longitudinal axis. For example, independent claim 1 of the '154 patent simply recites "a plurality of connecting elements." '154 patent, col. 8, l. 43. The claim continues, indicating that the connecting elements are "configured to interconnect only said cylindrical elements that are adjacent to each other" *Id.*, col. 8, ll. 44-46. The claim has no other express structural limitations on the claimed connecting elements. In contrast, independent claim 12 of the '154 patent, which is discussed in Part III below, recites "a plurality of generally parallel connecting elements" *Id.*, col. 9, l. 28 (emphasis added). Claim 12's language includes an express limitation on the

described [**23] connecting elements, that they be generally parallel. Based on the claim language alone, the term "connecting elements," and the terms "interconnected," "connecting members," and "struts for connecting," are not limited to those connectors that parallel each other and the stent's longitudinal axis.

The specification further supports not requiring the connecting elements described in the asserted claims to be generally parallel both to each other and to the stent's longitudinal axis. "[HN5] Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979, 34 U.S.P.Q.2D (BNA) 1321, 1329 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370, 38 U.S.P.Q.2D (BNA) 1461, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996). However, "while it is true that claims are to be interpreted in light of the specification and with a view to ascertaining the invention, it does not follow that limitations from the specification may be read into the claims" *Sjolund v. Musland*, 847 F.2d 1573, 1581, 6 U.S.P.Q.2D (BNA) 2020, 2027 (Fed. Cir. 1988). Here, the specification does not require the connecting elements be parallel to each other [**24] and to the stent's longitudinal axis. Scimed admits that the phrase "generally parallel" only appears in the patents in suit when it is used in a particular claim. At the same time, the specifications of the asserted patents do not discuss the orientation of the connecting elements in relation to each other or to the longitudinal axis of the described stent. Looking at the '154 patent for example, the specification's only discussion of the connecting elements' orientation states that the connecting elements are "disposed between adjacent cylindrical elements," '154 patent, col. 4, ll. 25-26, and that this adjacent placement "prevents shortening of the stent during the expansion thereof," *id.* at col. 5, ll. 50-51. See also *id.* at col. 3, ll. 1-4 (noting that the connecting elements should be joined at "either the peaks or the valleys of the undulating structure of the cylindrical elements In this manner there is no shortening of the stent upon expansion."). The specification's only other discussion of the connecting elements' orientation indicates that it is preferred to place them "on one side of the [*1339] cylindrical element 12 . . . to achieve maximum flexibility for a [**25] stent." *Id.* at col. 5, ll. 34-37. Contrary to Scimed's assertions, none of the specifications of the asserted patents teach that the connecting elements must be parallel both to each other and to the stent's longitudinal axis in order to prevent the shortening of the stent when the stent is expanded. As noted above, the specifications teach that it is the attachment of the connecting elements to either the peaks or the valleys of the cylindrical elements, as demonstrated in Figures 3 and 4 of the '154 patent, not the parallel placement of the connecting elements, that prevents shortening upon the stent's expansion.

261 F.3d 1329, *; 2001 U.S. App. LEXIS 17420, **;
59 U.S.P.Q.2D (BNA) 1801

Scimed correctly notes that all of the drawings in the asserted patents depict the connecting elements in parallel alignment both with each other and the stent's longitudinal axis. However, this fact, by itself, does not support adding such a limitation to the claims. See *Johnson Worldwide Assoc., Inc. v. Zebco Corp.*, 175 F.3d 985, 992, 50 U.S.P.Q.2D (BNA) 1607, 1612 (Fed. Cir. 1999) (noting that "[HN6] mere inferences drawn from the description of an embodiment of the invention cannot limit claim terms"). Without a "generally parallel" limitation in the claim or a [**26] discussion in the specification about the claimed connecting elements being generally parallel both to each other and to the stent's longitudinal axis, the drawings' depiction of the connecting elements in parallel relationship both with each other and the stent's longitudinal axis can not support the conclusion that such a limitation exists. Since nothing in the specification assigns significance to the fact that the drawings align the connecting elements parallel both to each other and to the stent's longitudinal axis, we will not allow this aspect of the drawings to be imported into the claims as a limitation. See, e.g., *Kraft Foods, Inc. v. Int'l Trading Co.*, 203 F.3d 1362, 1367-69, 53 U.S.P.Q.2D (BNA) 1814, 1818-19 (Fed. Cir. 2000) (indicating that the claim term "protecting back panel" was limited to a "relatively stiff" panel because, in addition to other intrinsic evidence, the specification's text described the back panel in the patent's drawings as being "constructed of a relatively stiff material"); *Toro Co. v. White Consol. Indus, Inc.*, 199 F.3d 1295, 1300-02, 53 U.S.P.Q.2D (BNA) 1065, 1069-70 (Fed. Cir. 1999) (construing the claim term "including" to [**27] mean "part of" and "permanently attached" because, in addition to the patent's drawings, the specification's text stressed that the claimed vacuum/blower's flow restriction ring was part of and attached to the invention's air inlet cover); *Wang Labs., Inc. v. Am. Online, Inc.*, 197 F.3d 1377, 1382-83, 53 U.S.P.Q.2D (BNA) 1161, 1164-65 (Fed. Cir. 1999) (noting that the claims were limited to a character-based protocol because of the express teachings of such a protocol in both the patent's specification and the drawings). In this case, the specifications only discuss the orientation of the connecting elements in relation to the cylindrical elements, not to other connecting elements or the stent's longitudinal axis. Therefore, although the drawings show the connecting elements parallel both to each other and to the stent's longitudinal axis, the drawings do not require limiting the claimed connecting elements to a configuration in which they are in parallel alignment both with each other and with the stent's longitudinal axis.

Finally, we note that the prosecution history supports a claim construction that does not require that the recited "connecting elements" be generally [**28] parallel both to each other and to the stent's longitudinal axis. [HN7] The prosecution history "is often of critical sig-

nificance in determining the meaning of the claims," *Vitronics*, 90 F.3d at 1582-83, 39 U.S.P.Q.2D (BNA) at 1577, since it may be used to determine the scope and meaning of the claims, *Alpex [*1340] Computer Corp. v. Nintendo Co.*, 102 F.3d 1214, 1220, 40 U.S.P.Q.2D (BNA) 1667, 1671 (Fed. Cir. 1996).

The prosecution history does not support the district court's claim construction. In prosecuting the '986 application, the inventors argued that, in contrast to the Palmaz '417 patent's non-parallel connecting members, "the independent claims of the present invention recite a plurality of generally parallel connecting elements." However, when making this argument, the inventors were referring to the specific language in the '986 application's claims, language that recited "a plurality of generally parallel connecting elements," to distinguish the '986 application from the Palmaz '417 patent. As discussed below in Part III, this language appears in other asserted claims of the '154 patent, specifically claims 12-15, 17, 18, and 20. The inventors explicitly limited [**29] their arguments to the '986 application's claims that recite "generally parallel connecting elements," not to claims that only recite "connecting elements." Therefore, the arguments do not apply to the invention's connecting elements in general, but only to connecting elements that are described, in the claims, as "generally parallel."

Scimed, however, points to statements that the inventors made that allegedly applied to their invention in general and that, therefore, were not exclusive to the '986 application's claim language. In distinguishing the Palmaz '417 patent, the inventors stated:

Moreover, Applicants' invention is superior to the stent disclosed in the Palmaz patent from a functional standpoint. As is clearly shown in Figs. 7 and 10 of the '417 Palmaz patent, due to its construction, upon expansion, the stent will substantially shorten as the slotted members of the stent body expand. Further, connecting members 100 and 102 deform upon expansion, as depicted in Figure 10, which adds to the shortening of the stent. .

The problem of stent shortening as taught by Palmaz has been solved by Applicants' invention due to its novel structure. The connecting elements of [**30] Applicants' invention are configured to "interconnect only said cylindrical elements that are adjacent to each other." Accordingly, as Applicants' stent is expanded from its first configuration to a

larger configuration, the stent will not appreciably shorten

We reject Scimed's argument. Even if these statements could apply to the claims that are now at issue, the inventors argued that their invention's structure was superior to the Palmaz '417 patent because the Palmaz '417 patent allowed substantial shortening upon expansion while "the connecting elements of the inventors' invention are configured to 'interconnect only said cylindrical elements that are adjacent to each other.' Accordingly, as the inventors' stent is expanded from its first configuration to a larger configuration, the stent will not appreciably shorten." The inventors thus argued that their invention was superior to the Palmaz '417 patent because it configured the connecting elements to join adjacent cylindrical elements. The inventors did not argue that their invention was superior because its connecting elements were parallel to the stent's longitudinal axis. Finally, even if parts of the '986 [*31] application's prosecution history could be viewed as applying to asserted claims that do not explicitly describe "generally parallel connecting elements," the prosecution history does not support the district court's claim construction. As discussed below in Part III, nowhere in the prosecution history did the inventors indicate that their invention, in general, required that the connecting elements be parallel to each other and to the stent's longitudinal axis. [*1341]

The district court erred in construing the claim terms "connecting elements," "interconnected," "connecting members," and "struts for connecting" as requiring connecting members to run parallel both to each other and to the longitudinal axis of the stent. The court's grant of summary judgment of no literal infringement or infringement under the doctrine of equivalents with respect to claims 11 and 12 of the '955 patent, claims 1-4, 9, and 23 of the '154 patent, claims 1-4 of the '721 patent, and claims 1, 2, 5, 6, 9, and 11-13 of the '158 patent was based on this incorrect construction, Adv. Cardiovascular IV, slip op. at 11-12. We therefore vacate the district court's grant of summary judgment with regard to those claims, [*32] and remand for further proceedings.

III.

In contrast to the asserted claims just discussed that only recite "connecting elements," independent claim 12 and dependent claims 13-15, 17, 18, and 20 of the '154 patent specifically claim "a plurality of generally parallel connecting elements." '154 patent, col. 9, l. 25 - col. 10, l. 17. The court construed the phrase "generally parallel connecting elements" to require the described connecting elements to run generally parallel both to each other and to the stent's longitudinal axis. Adv. Cardiovascular I, slip op. at 25-27. Based on this construction, the court granted summary judgment of no literal infringement of

claims 12-15, 17, 18, and 20 of the '154 patent because it found that the connecting elements on the opposite sides of the NIR stent are not generally parallel to each other because they curve in opposite directions. Adv. Cardiovascular III, slip op. at 8. The court also noted that the connecting elements of the NIR stent are not parallel to the stent's longitudinal axis because, while the longitudinal axis is straight, the connecting elements are curved. Id. at 9. The court also granted summary judgment of no [*33] infringement under the doctrine of equivalents, finding that ACS had failed to present any evidence to support its contention that non-parallel connecting elements are insubstantially different from the claimed generally parallel connecting elements. Id. 10-12.

ACS argues that claims 12-15, 17, 18, and 20 of the '154 patent only require the connecting elements to be generally parallel to each other, not to the stent's longitudinal axis. ACS asserts that, under this construction, the NIR stent's connecting elements meet the "generally parallel" limitation because, while curved, they are still parallel to each other. Scimed responds by arguing that the district court properly construed "generally parallel connecting elements" to require the connecting elements be parallel both to each other and to the stent's longitudinal axis. Relying upon this construction, Scimed asserts that the NIR stent cannot infringe because its connecting elements are curved, making them non-parallel to each other and to the stent's longitudinal axis.

We conclude that the district court erred in construing claims 12-15, 17, 18, and 20 of the '154 patent as requiring connecting elements that run parallel [*34] to the longitudinal axis of the stent. These claims simply recite "generally parallel connecting elements." See, e.g., id. at col. 9, l. 28. The claims contain no language explicitly requiring the connecting elements to be parallel to the longitudinal axis of the stent. In addition, as noted above in Part II, there is no support for such a construction in the '154 patent's specification or drawings.

Scimed, however, points to the prosecution history. It argues that the inventors distinguished their invention over the disclosure of the Palmaz '417 patent on the ground that the Palmaz '417 patent disclosed [*1342] connecting members that were not parallel to the longitudinal axis of the stent. The prosecution history does not support this argument.

It is important to recognize exactly what the inventors stated with respect to the Palmaz '417 patent and their invention, as disclosed in the '986 application:

The '417 Palmaz patent discloses connector members 100 which are preferably disposed in a "non-parallel" relationship

with respect to the longitudinal axis of adjacent grafts or prosthesis 70. . . . As seen in Figures 7-10 of Palmaz, each of the connector members 100 and [**35] 102 are disposed in a non-parallel relationship with respect to the longitudinal axis of the adjacent prosthesis 70.

* * *

The independent claims of the present invention recite "a plurality of generally parallel connecting elements" which clearly distinguish over the preferred "non-parallel" connecting members 100 of the '417 Palmaz patent.

Figures 7, 9, and 10 from the Palmaz '417 patent are as follows:

SEE FIGURE 10, FIGURE 7 AND FIGURE 9 IN ORIGINAL

The inventors did not argue that connecting members 100 and 102 are in a non-parallel relationship with the longitudinal axis of what would be the "stent" in Palmaz, which is designated by the number 70'. See Palmaz '417 patent col. 12, ll. 15-17 (stating that "graft or prosthesis, 70' is illustrated as including three grafts, or prostheses, 70, flexibly connected to one another by connecting members 100"). Rather, they argued that connecting members 100 and 102 were in a non-parallel [**1343] relationship with "graft" or "prosthesis" elements 70. In other words, the inventors were not saying that their invention was distinguished from the Palmaz '417 patent because Palmaz had connecting members that were not parallel to the longitudinal [**36] axis of the stent, which, by inference, their invention did. Rather, they were saying that their invention, unlike the Palmaz '417 patent, see connecting members 100 and 102 in Figures 7, 9, and 10 above, had connecting members that were in parallel alignment with the longitudinal axis of prosthesis 70. Thus, the inventors neither stated nor suggested during prosecution that their invention was limited to a stent in which the connecting members were in parallel alignment with the longitudinal axis of the stent.
n7

n7 After the statements cited above were made, the examiner responded that "there is no limitation of the claim which requires the connector members to be parallel to the longitudinal axis of the stent; only that the connector members are 'generally parallel'." This response by the examiner further supports our conclusion that the in-

ventors were not defining "generally parallel connecting elements" to mean connecting elements that are parallel to the stent's longitudinal axis.

As already seen, the [**37] district court based its grant of summary judgment of non-infringement on two aspects of the NIR stent: that the stent's connecting elements are not parallel to each other and are not parallel to the stent's longitudinal axis. While claims 12-15, 17, 18, and 20 of the '154 patent do not contain the latter limitation, neither party disputes that the claims require the former limitation--that the connecting elements be parallel to each other. When determining whether this limitation had been infringed, the district court noted that, "when the elements of the stent have been cut from a flat sheet, the 'connecting elements' in any particular row would be parallel to one another," but "when the sheet is rolled to form the finished stent, however, the NIR stent's 'connecting elements' are not aligned in the same manner because 'connecting elements' on opposite sides of the cylinder run in opposite directions" Adv. Cardiovascular III, slip op. at 8. The court thus concluded that, for purposes of infringement, it was required to look at the finished stent, and that in the finished NIR stent, the connecting elements are not generally parallel to each other. Id.

ACS [**38] does not dispute the district court's description of the NIR stent's connecting elements. Nor, as just noted, does ACS dispute the district court's construction that the claims require the connecting elements to be generally parallel to each other. Instead, ACS argues that the district court's analysis as to whether the connecting elements are actually parallel to each other uses the wrong frame of reference. ACS asserts that the correct frame of reference for comparing the connecting elements is not a linear plane cutting through opposite sides of the stent, but a cylindrical plane following the surface of the stent. ACS argues that along the cylindrical plane of the stent, the connecting elements are parallel to each other. ACS notes that, during prosecution, the examiner considered the Palmaz '417 patent's connecting elements, which are slanted, to be parallel, further supporting its argument that the NIR stent's connecting elements, which are also not straight, are parallel. Scimed responds that the connecting elements on the opposite sides of the NIR stent are not parallel to each other because, when looking through the stent, they curve in opposite directions. Therefore, Scimed [**39] contends, the NIR stent cannot infringe.

The parties' arguments present a question of claim construction. Neither party [**1344] disputes the shape of the NIR stent's connecting elements or that claims 12-15, 17, 18, and 20 of the '154 patent require the connect-

ing elements be generally parallel to each other. What the parties do dispute is the manner in which the connecting elements are required to be parallel. ACS argues that the connecting elements only need to be parallel to each other as they are compared when looking around the cylindrical surface of the stent, while Scimed and the district court compare connecting elements by looking through the side of the stent. Nothing in the intrinsic evidence of record suggests that one method of determining parallelism is correct over the other. The claims simply recite "a plurality of generally parallel connecting elements," providing no indication of the frame of reference in which the connecting elements should be parallel to each other. As noted in Part II, *supra*, the specification does not mention the connecting elements being parallel. The drawings show parallel connecting elements, but the connecting elements in the drawings are straight [**40] lines, which are parallel to each other in both a cylindrical plane and a linear plane. ACS correctly notes that the prosecution history contains statements by the examiner that the Palmaz '417 patent's connecting elements, which would not be parallel under Scimed's construction, are generally parallel to each other, but these statements alone do not support ACS's construction. There are no statements by the inventors, or the examiner, that indicate the specific manner in which the connecting elements are required to be generally parallel to each other.

[HN8] When "intrinsic evidence is insufficient to enable the court to determine the meaning of the asserted claims," resort may be had to extrinsic evidence. *Vitronics*, 90 F.3d at 1584, 39 U.S.P.Q.2D (BNA) at 1578. Extrinsic evidence will be particularly helpful in this case when construing the claims and properly determining what it means to someone skilled in the art to require the connecting elements to be "generally parallel" to each other. *Pitney-Bowes*, 182 F.3d at 1308-09, 51 U.S.P.Q.2D (BNA) at 1168.

For the foregoing reasons, we vacate the district court's grant of summary judgment of non-infringement of claims 12-15, 17, [**41] 18, and 20 of the '154 patent. [HN9] On remand, the district court may consider

extrinsic evidence, "such as expert testimony, inventor testimony, dictionaries, and technical treatises and articles," *Vitronics*, 90 F.3d at 1584, 39 U.S.P.Q.2D (BNA) at 1578, in order to determine in what manner the connecting elements should be "generally parallel" to each other.

CONCLUSION

The district court erred in construing the claim terms "connecting elements," "interconnected," "connecting members," and "struts for connecting" by improperly requiring the connecting elements to be both generally parallel to each other and to the stent's longitudinal axis. We therefore vacate the court's grant of summary judgment of no literal infringement or infringement by equivalents of claims 11 and 12 of the '955 patent, claims 1-4, 9, and 23 of the '154 patent, claims 1-4 of the '721 patent, and claims 1, 2, 5, 6, 9, and 11-13 of the '158 patent, which was based solely on this erroneous construction. We additionally hold that the district court erred in construing the phrase "generally parallel connecting elements" in claims 12-15, 17, 18, and 20 of the '154 patent to require the connecting elements to [**42] be generally parallel to the stent's longitudinal axis. We vacate the court's grant of summary judgment of non-infringement of these claims because the particular way in which the claims require the connecting elements to [*1345] be generally parallel to each other is unclear, based solely on the intrinsic evidence of record. We affirm the district court's grant of summary judgment of non-infringement of claims 10 and 21 of the '154 patent, claims 14-16, 19, and 20 of the '158 patent, and claims 1, 2, and 4-13 of the '893 patent. The case is remanded to the district court for further proceedings consistent with this opinion.

AFFIRMED-IN-PART, VACATED-IN-PART, and REMANDED.

COSTS

Each party shall bear its own costs.

2004 U.S. Dist. LEXIS 19705, *

Time of Request: August 24, 2005 09:05 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

2 of 10 DOCUMENTS

**MEDINOL LTD., Plaintiff, -against- GUIDANT CORP. and ADVANCED
CARDIOVASCULAR SYSTEMS, INC., Defendants.**

03 Civ. 2604 (SAS)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2004 U.S. Dist. LEXIS 19705

September 30, 2004, Decided
September 30, 2004, Filed

PRIOR HISTORY: Medinol Ltd. v. Guidant Corp., 341 F. Supp. 2d 301, 2004 U.S. Dist. LEXIS 10321 (S.D.N.Y., 2004)

Cordis Corp. v. Medtronic Ave, Inc., 336 F. Supp. 2d 363, 2004 U.S. Dist. LEXIS 19174 (D. Del., 2004)

DISPOSITION: Disputed patent terms construed.

CASE SUMMARY:

PROCEDURAL POSTURE: A Markman hearing for claim construction was conducted after plaintiff alleged that defendants infringed certain of plaintiff's patents directed to balloon-expandable stents.

OVERVIEW: Plaintiff designed and manufactured coronary stents, and defendants developed, marketed, and sold cardiovascular medical products. Plaintiff was the assignee of the five patents, and it asserted 33 claims from the patents-in-suit. The patents-in-suit all shared the same drawings and essentially the same specification. The court noted that determination of infringement in a patent case involved two steps: (1) construction of the terms of the asserted claims ("claim construction") and (2) a determination of whether the accused device infringes the claims, as construed. Construing the term "loop," the court accepted plaintiff's plain meaning definition: a structural element that turned back on itself. The court found that the claim language made clear that the term "spaced apart" meant separated - i.e. that the first meanders were placed at some distance from one another. The prosecution history presented by defendants failed to contradict that conclusion. The court also noted that the plain meaning of the term "cell" was an arrangement of structural elements that defined an enclosed space.

OUTCOME: The court interpreted the claims of the patents involved.

LexisNexis(R) Headnotes***Patent Law > Infringement Actions > Claim Interpretation > General Overview***

[HN1] Determination of infringement in a patent case involves two steps: (1) construction of the terms of the asserted claims (claim construction) and (2) a determination of whether the accused device infringes the claims, as construed.

Patent Law > U.S. Patent & Trademark Office Proceedings > Continuation Applications > General Overview***Patent Law > Infringement Actions > Claim Interpretation > General Overview***

[HN2] Claim construction is a question of law, the purpose of which is to determine what is covered by the claims of a patent. In other words, the construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims. Claim disputes often turn on the meaning of a phrase, a word, or a single functional or structural aspect of the patented device. Courts confronted with the task of construing patent claims are guided by well settled principles of interpretation. Of primary importance is the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history. Additionally, courts may, as a discretionary matter, receive extrinsic evidence, such as expert testimony, to understand the technical aspects of a patent. However, extrinsic evidence cannot be used to arrive at a claim construction that is clearly at odds with the construction mandated by the intrinsic evidence.

Patent Law > Claims & Specifications > Definiteness > General Overview***Patent Law > Claims & Specifications > Enablement Requirement > General Overview******Patent Law > Infringement Actions > Claim Interpretation > General Overview***

[HN3] Courts first consider the words of the claims themselves to define the scope of the patented invention. A claim term is presumed to possess its ordinary and customary meaning, in view of both the temporal and technological context in which it arose. That is, the critical inquiry for purposes of claim construction relates to how artisans of ordinary skill in the relevant art at the time of invention understood the claim terms. In ascertaining the ordinary and customary meaning of particular words, the Federal Circuit has counseled that dictionaries, encyclopedias and treatises publicly available at the time the patent is issued are particularly useful resources as they are objective reflections of common understanding not influenced by expert testimony or events subsequent to the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation. Nonetheless, courts must exercise caution in relying on non-scientific dictionaries when confronted with technical terms.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN4] Where a word is defined variously in a dictionary, the intrinsic record must always be consulted to identify which of the different possible dictionary meanings of the claim terms in issue is most consistent with the use of the words by the inventor. If more than one dictionary definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all such consistent meanings.

Patent Law > Claims & Specifications > Enablement Requirement > Standards & Tests***Patent Law > Infringement Actions > Exclusive Rights > General Overview******Patent Law > Claims & Specifications > Description Requirement > General Overview***

[HN5] The presumption favoring the general usage of particular terms can be rebutted by evidence in the intrinsic record. For instance, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history. Accordingly, courts also review the patent specification, which is perhaps the single best guide to the meaning of a disputed term and demonstrates whether the patentee used terms in a manner inconsistent with their ordinary meaning. The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. The presumption of ordinary meaning is overcome by the specification where the patentee has set forth a definition for the term different from its customary meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.

Patent Law > U.S. Patent & Trademark Office Proceedings > General Overview***Patent Law > Infringement Actions > Prosecution History Estoppel > General Overview***

[HN6] Courts examine the prosecution history of the patent to assess whether the patentee made express representations regarding the scope and meaning of the claims to obtain the patent. The prosecution history includes the record of all proceedings relating to the patent that took place before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims, and possibly an examination of the prior art. As in the case of the specification, the patent applicant's consistent usage of a term in prosecuting the patent may enlighten the meaning of that term. In particular, under the doctrine of prosecution disclaimer, the prosecution history limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution. Indeed, it is a fun-

damental precept in claim construction jurisprudence that patentees cannot "recapture through claim interpretation specific meanings disclaimed during prosecution. This promotes the public notice function of the intrinsic evidence and protects the public's reliance on definitive statements made during prosecution.

Patent Law > Claims & Specifications > Claim Language > Multiplicity

Patent Law > Infringement Actions > Prosecution History Estoppel > General Overview

[HN7] Although prosecution disclaimer does not attach where the alleged disavowal of claim scope is ambiguous, an unequivocal disavowal of a particular meaning advanced by the patentee to overcome the prior art and obtain the patent narrows the ordinary meaning of the claim congruent with the scope of surrender. Notably, when multiple patents derive from the same initial application, the prosecution history regarding a claim limitation in any patent that has issued applies with equal force to subsequently issued patents that contain the same claim limitation.

Patent Law > Claims & Specifications > Theory of Invention

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

Patent Law > Claims & Specifications > Definiteness > General Overview

[HN8] If the court finds that a claim is not amenable to construction, then the claim is invalid as indefinite under 35 U.S.C.S. § 112, which requires the claims of a patent to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. The definiteness inquiry is directed to whether persons with ordinary skill in the art would comprehend the scope of the claim when read against the specification. Because a claim is statutorily presumed to be valid, it does not fail for indefiniteness simply because it poses a difficult issue of claim construction." Rather, if the claim is subject to construction, i.e., it is not insolubly ambiguous, it is not invalid for indefiniteness. Thus, even where a court's construction of the claim is one over which reasonable minds will disagree, the claim is, nonetheless, clear enough to survive the test of invalidity for indefiniteness. Where the question of validity under 35 U.S.C.S. § 112 is close, it is resolved in favor of the patentee.

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JUDGES: SHIRA A. SCHEINDLIN, U.S.D.J.

OPINIONBY: SHIRA A. SCHEINDLIN

OPINION: OPINION AND ORDER

Medinol Ltd. ("Medinol") alleges that Guidant Corp. ("Guidant") and its subsidiary Advanced Cardiovascular Systems, Inc. ("ACS") (collectively "defendants") infringed (and continue to infringe) certain of Medinol's patents directed to balloon-expandable stents. Specifically, Medinol contends that the asserted claims of United States Patent Nos. (1) 5,733,303 ("303 Patent"); (2) 5,843,120 ("120 Patent"); (3) 5,972,018 ("018 Patent"); (4) 6,443,982 ("982 Patent"); and (5) 6,461,381 ("381 Patent") (collectively "patents-in-suit") n1 are infringed by defendants' manufacture, use, offer for sale, sale, and/or [*2] importation of the MULTI LINK PENTA (R) and MULTI LINK ZETA TM systems. n2 Although the parties have agreed on definitions for seven terms contained in the asserted claims, twelve terms are in dispute. A *Markman* Hearing was held on September 2, 2004. n3 The Court's construction of the disputed terms follows.

n1 See Exs. 1-5 to 8/20/04 Affirmation of Yun G. Lee, counsel for Guidant ("Lee Aff.").

n2 See Complaint ("Compl.") PP 24-26, 30-32, 36-38, 42-44, 48-50. Guidant counterclaims pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § § 2201-2202, and U.S. patent law, 35 U.S.C. § 100, *et seq.*

n3 See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996).

I. BACKGROUND

My previous opinion in this case described the underlying facts and procedural history, which I will not repeat here, except to summarize those points that are relevant to the instant dispute over claim terms. n4

N4 See *Medinol Ltd. v. Guidant Corp.*, 341 F. Supp. 2d 301, 2004 U.S. Dist. LEXIS 10321, No. 03 Civ. 2604, 2004 WL 1243605 (S.D.N.Y. June 4, 2004).

[*3]

A. The Parties

Medinol, which designs and manufactures coronary stents, maintains its principal place of business in Tel Aviv, Israel. n5 Guidant, an Indiana-based company, develops, markets, and sells cardiovascular medical products. ACS has its principal place of business in California. n6

n5 Compl. P 5.

n6 *Id.* PP 6-7.

B. History of Stent Development

Balloon-expandable stents were developed to improve the success rate of percutaneous transluminal coronary angioplasty ("PTCA" or "balloon angioplasty"). n7 PTCA is a procedure during which the narrowed, diseased arteries are dilated to restore blood flow. This is accomplished by inserting and maneuvering into place a catheter to which a deflated balloon is attached. Once properly positioned, the balloon is inflated, compressing the fatty deposits, or plaque, against the artery wall. The catheter and balloon are then removed from the artery.

n7 Stents are also "used to treat diseased blood vessels in . . . other areas of the body ('peripheral arteries')." *Scimed Life Sys., Inc. v. Johnson & Johnson*, 225 F. Supp. 2d 422, 425 (D. Del. 2002), *aff'd*, 87 Fed. Appx. 729 (unpublished decision) (Fed. Cir. Jan. 14, 2004).

[*4]

Despite the benefits associated with PTCA, approximately thirty-five percent of patients experienced renarrowing of the arteries, a problem that stents are designed to address. n8 Stents are, in essence, miniature scaffolding devices that prop open constricted arteries. They are delivered into the vessels on a balloon via a catheter. When the balloon is "at the area of blockage, it is inflated, [causing] the stent to expand and press against the vessel wall, thereby opening the artery. The balloon is then deflated and removed" n9 In light of the foregoing, it is desirable for stents to possess the following characteristics: (1) flexibility, which permits the stent to negotiate the curves of the artery; (2) strength or rigidity; and (3) uniform coverage, *i.e.*, relatively few gaps so that portions of the vessel do not press between the struts into the lumen. n10

n8 The major complications associated with balloon angioplasty are: (1) dissection, where the plaque "cracks" during the procedure, resulting in a flap that falls into the lumen creating a complete occlusion of the artery; (2) recoil of the vessel wall; and (3) restenosis, or renarrowing of the involved arteries, caused by a buildup of scar tissue created by the procedure. See Transcript of 9/2/04 *Markman* Hearing ("Tr.") at 6-8 (statements of Dr. Jacob Richter, Chief Technology Officer and Chairman of the Board for Medinol). However, PTCA is generally less traumatic and expensive than the alternative - coronary artery bypass surgery. See Medinol's Memorandum of Law Regarding Claim Construction ("Pl. Mem.") at 2.

[*5]

n9 *Scimed Life Sys.*, 225 F. Supp. 2d at 425.

n10 *See* Tr. at 10 (Richter).

1. Early Stent Designs: Slotted Tube and Coil

The "first generation" stents were of two varieties: slotted tube and coil. Developed by Julio Palmaz in the 1980s, n11 the slotted tube stents had a "plurality of slots . . . disposed substantially parallel to the longitudinal axis of the tubular member" that, when expanded, had a honeycomb appearance. n12 Because the Palmaz stent was very rigid, it provided significant radial strength, but lacked flexibility. n13 By contrast, the coil stent was designed by Cesare Gianturco and comprised "wire formed into a serpentine configuration including a series of straight sections and a plurality of bends." n14 As such, it was highly flexible but lacked rigidity and hence strength.

n11 *See* U.S. Patent Nos. 4,739,762 ("Palmaz '762 Patent") [assigned to Expandable Grafts P'ship] (Apr. 26, 1988), Ex. 11 to Lee Aff.; 5,102,417 ("Palmaz '417 Patent") [Expandable Grafts P'ship] (Apr. 7, 1992), Ex. 12 to Lee Aff.

[*6]

n12 Palmaz '762 Patent, col. 3, ll. 38-40. *See also id.* Figures 1A, 1B.

n13 *See* Tr. at 11 (Richter); *id.* at 29 (statement of Dr. Jerome Segal, expert witness for Guidant).

n14 U.S. Patent No. 5,041,126 [Cook Incorporated] (Aug. 20, 1991), Ex. 10 to Lee Aff., col. 2, ll. 5-7. This design was the basis for the Gianturco-Roubin stent.

2. Articulated Stents

The next generation of stents addressed some of the weaknesses of the early devices. Specifically, the Palmaz-Schatz stent, based on the slotted cell design, n15 dealt with the inflexibility of its predecessor through the incorporation of a one-millimeter straight flexible connector joining two seven-millimeter tubular members. n16 This yielded a device that was more maneuverable, although the tubular members were still inflexible. Moreover, the straight connector that created an articulation point and allowed the stent to bend also caused a large gap to form in middle of the device. n17 Johnson & Johnson attempted to remedy this problem by inserting not one, but six, helical connectors between the rigid members. [*7] Nonetheless, the stent still lacked flexibility and presented new hazards, *e.g.*, upon expansion, the helical connectors caused the rigid portions to twist, risking damage to the vessel. n18

n15 *See* U.S. Patent No. 5,195,984 [Expandable Grafts P'ship] (Mar. 23, 1993), Ex. 13 to Lee Aff.

n16 *See id.* col. 4, ll. 2-5; *see also id.* Figure 7.

n17 *See* Tr. at 13 (Richter).

n18 *See id.*

3. Guidant's Multi-Link Stent

Guidant's Multi-Link stent, based on U.S. Patent 5,421,955 ("Lau '955 Patent") was among the next generation of stents, for which the primary innovation was the ability to be uniformly flexible at any point along the stent. n19 The Lau '955 Patent disclosed an invention comprising serpentine rings with straight connectors. n20 The rings may be connected in two ways: out of phase (connecting adjacent crowns of rings that face each other) and in phase (crowns point-

ing in one direction). n21 The in-phase arrangement was commercialized as the Multi-Link stent. Although [*8] the straight connectors are inflexible, serving to "provide increased stability and . . . prevent warping of the stent upon expansion," the rings themselves permit flexibility. n22 Consequently, the rings could become deformed, resulting in large, irregular gaps, thereby compromising vessel wall support. Medinol dubbed this as an "open cell" n23 design, as opposed to a "closed cell" design, which is associated with stents that have flexible links permitting the "cells on the outside of the curve to elongate uniformly and the cells on the inside of the curve to shorten uniformly." n24

n19 Lau '955 Patent (June 6, 1995), Ex. 14 to Lee Aff.

n20 See Tr. at 32-33 (Segal).

n21 See Lau '955 Patent, Figures 5 (in phase), 11 (out of phase).

n22 See *id.* col. 1, ll. 65-68.

n23 Tr. at 15 (Richter).

n24 Pl. Mem. at 9. Medinol's stent design, which served as the basis for the NIR stent, features a "closed cell" design. See *id.*

C. Medinol's Patents

Medinol is the assignee [*9] of the '303, '018, '120, '381, and '982 Patents, a family of flexible, expandable stents developed by Henry Marshall Israel and Gregory Pinchasik. Medinol asserts thirty-three claims from the patents-in-suit: 13, 16, 18, 27, and 28 of the '120 Patent; 1, 2-15, and 17 of the '982 Patent; claim 28 of the '303 Patent; claim 51 of the '018 Patent; and claims 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent. n25

n25 For the text of these claims, see *Medinol*, 2004 U.S. Dist. LEXIS 10321, 2004 WL 1243605, at *2*6. In the Complaint, Medinol also asserted claims 24 of the '303 Patent and 64 of the '018 Patent. However, this Court granted Guidant's motion for summary judgment on the basis of collateral estoppel as to those two claims. See *id.* 2004 U.S. Dist. LEXIS 10321, [WL] at *17.

The patents-in-suit all share the same drawings and essentially the same specification, and are continuations of Application Serial No. 282,181 (filed on July 28, 1994) and continuations-in-part of Application Serial No. 213,272 (filed on March 17, 1994), issued as U.S. Patent [*10] No. 5,449,373 ("Pinchasik '373 Patent"). n26 The specification of the patents-in-suit describes the stent design as comprising: (1) claims that describe stents in terms of two types of intertwined meander patterns and (2) claims that describe stents in terms of the structural elements of its flexible cells. n27 The "key to the flexibility of the stents" based on Medinol's patents, is the "capacity for loops in the flexible links (or in the second meander patterns) to elongate differentially when the stent goes around a curve." n28 The pattern for the stent is further explained in terms of three embodiments, represented pictorially in eight figures (Figures 1-5 [first preferred embodiment], 6 [second embodiment], and 7-8 [third embodiment]).

n26 See Pinchasik '373 Patent, Ex. 6 to Lee Aff. The Pinchasik '373 Patent features "lighting bolt"-shaped, Pl. Mem. at 5, or "kinked," Pinchasik '373 Patent, col. 2, ll. 16-18, connectors linking substantially rigid segments. See *id.* This design is an attempt to "improve" the Palmaz-Schatz stent by minimizing twisting on expansion and articulation-point gaps. Pl. Mem. at 5.

[*11]

n27 See Pl. Mem. at 7-8.

n28 *Id.* at 8.

D. Cordis Litigation

In December 1999, Medinol and its licensee, Scimed Life Systems, Inc., filed a patent infringement action in the district of Delaware, alleging that Cordis Corp., Johnson & Johnson, and Johnson & Johnson Interventional Systems, Inc. had infringed certain claims of Medinol's '303, '120, and '018 patents. n29 During those proceedings, the district court construed various claim terms, including: "stent"; "cell"; "member having a longitudinal component"; "loop"; "first loop" and "second loop"; "disposed between"; "disposed generally opposite"; "flexible compensating member or flexible link"; "area of inflection"; "uniform cellular structure"; "meander," "first meanders," and "second meanders"; "said loops adapted so that said stent prior to expansion is substantially uniformly flexible along its longitudinal axis"; "stent which is substantially uniformly flexible with respect to its longitudinal axis by the flexibility of its cells with respect to said axis"; "apices"; and "plurality of flexible links." n30

n29 In *Cordis*, Medinol asserted that claims 12 of the '303 Patent; 13 of the '120 Patent; and 35, 47, and 60 of the '018 Patent were infringed.

[*12]

n30 See 8/15/01 Order Construing Disputed Claim Terms, No. 99 Civ. 904 (D. Del.) ("*Cordis* Order"), Ex. 3 to Pl. Mem.

II. APPLICABLE LAW

A. Principles of Claim Construction

[HN1] Determination of infringement in a patent case involves two steps:

(1) construction of the terms of the asserted claims ("claim construction") and (2) a determination of whether the accused device infringes the claims, as construed. n31 [HN2] Claim construction is a question of law, n32 the purpose of which is to determine what is covered by the claims of a patent. In other words, "the construction of claims is simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims." n33 Claim disputes often turn on the meaning of a phrase, a word, or a single functional or structural aspect of the patented device.

n31 See *Metabolite Labs., Inc. v. Laboratory Corp. of Am. Holdings*, 370 F.3d 1354, 1360 (Fed. Cir. 2004).

n32 See *Markman*, 517 U.S. at 384, 390-91.

[*13]

n33 *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1322 (Fed. Cir. 2001) (quoting *Embrex, Inc. v. Serv. Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000)).

Courts confronted with the task of construing patent claims are guided by well settled principles of interpretation. Of primary importance is the "intrinsic evidence of record, *i.e.*, the patent itself, including the claims, the specification and, if in evidence, the prosecution history." n34 Additionally, courts may, as a discretionary matter, receive extrinsic evidence, such as expert testimony, to understand the technical aspects of a patent. n35 However, extrinsic evidence cannot be used to "arrive at a claim construction that is clearly at odds with the construction mandated by the intrinsic evidence." n36

n34 *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Intrinsic evidence is the "most significant source" in ascertaining the "legally operative meaning of disputed claim language." *Id.*

[*14]

n35 See *Metabolite Labs.*, 370 F.3d at 1360.

n36 *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 977 (Fed. Cir. 1999). See also *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 981 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370, 134 L. Ed. 2d 577, 116 S. Ct. 1384.

[HN3] Courts first consider the "words of the claims themselves . . . to define the scope of the patented invention." n37 A claim term is presumed to possess its ordinary and customary meaning, in view of both the temporal and technological context in which it arose. That is, the critical inquiry for purposes of claim construction relates to how "artisans of ordinary skill in the relevant art at the time of invention" understood the claim terms. n38 In ascertaining the "ordinary and customary meaning" of particular words, the Federal Circuit has counseled that "dictionaries, encyclopedias and treatises [publicly available at the time the patent is issued] are particularly useful resources" as they are objective "reflections of common understanding not influenced by expert testimony or events subsequent to [*15] the fixing of the intrinsic record by the grant of the patent, not colored by the motives of the parties, and not inspired by litigation." n39 Nonetheless, courts must exercise caution in relying on non-scientific dictionaries when confronted with technical terms. n40

n37 *Vitronics*, 90 F.3d at 1582.

n38 *Metabolite Labs.*, 370 F.3d at 1360 ("Indeed, normal rules of usage create a 'heavy presumption' that claim terms carry their accustomed meaning in the relevant community at the relevant time.").

n39 *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 1203 (Fed. Cir. 2002), *cert. denied*, 538 U.S. 1058, 155 L. Ed. 2d 1108, 123 S. Ct. 2230 (2003). These resources are not properly classified as extrinsic evidence. See *id.* at 1203. Rather, they are best used in conjunction with the intrinsic record. For example, [HN4] where a word is defined variously in a dictionary,

the intrinsic record must always be consulted to identify which of the different possible dictionary meanings of the claim terms in issue is most consistent with the use of the words by the inventor. If more than one dictionary definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all such consistent meanings.

Id. (citations omitted).

[*16]

n40 See *Revlon Consumer Prods. Corp. v. Estee Lauder Cos.*, 2003 U.S. Dist. LEXIS 13004, No. 00 Civ. 5960, 2003 WL 21751833, at *15 & n.15 (S.D.N.Y. July 30, 2003) (citing cases).

[HN5] The presumption favoring the general usage of particular terms can be rebutted by evidence in the intrinsic record. For instance, "a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history." n41 Accordingly, courts also review the patent specification, which is perhaps the "single best guide to the meaning of a disputed term" n42 and demonstrates whether the patentee "used terms in a manner inconsistent with their ordinary meaning." n43 The specification contains a "written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it." n44 The presumption of ordinary meaning is overcome by the specification where the patentee "has set forth a definition for the term different from its . . . customary [*17] meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." n45

n41 *Vitronics*, 90 F.3d at 1582.

n42 *Id.* I

n43 *DeMarini Sports*, 239 F.3d at 1323.

n44 *Vitronics*, 90 F.3d at 1582. *See also* 35 U.S.C. § 112.

n45 *International Rectifier Corp. v. IXYS Corp.*, 361 F.3d 1363, 1370 (Fed. Cir. 2004).

[HN6] Courts also examine the prosecution history of the patent to assess whether the patentee made express representations regarding the scope and meaning of the claims to obtain the patent. n46 The prosecution history includes the record of all proceedings relating to the patent that took place before the Patent and Trademark Office ("PTO"), including "any express representations made by the applicant regarding the scope of the claims," and possibly an examination of the prior art. n47 [*18]

n46 *See DeMarini Sports*, 239 F.3d at 1323.

n47 *Vitronics*, 90 F.3d at 1582. *See also Middleton, Inc. v. Minnesota Mining & Mfg. Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002) ("This court also considers the prosecution history . . . to determine whether the applicant clearly and unambiguously disclaimed or disavowed [any interpretation] during prosecution in order to obtain claim allowance.") (quotation marks and citation omitted).

"As in the case of the specification, the patent applicant's consistent usage of a term in prosecuting the patent may enlighten the meaning of that term." n48 In particular, under the doctrine of prosecution disclaimer, the prosecution history "limits the interpretation of claim terms so as to exclude any interpretation that was disclaimed during prosecution." n49 Indeed, it is a "fundamental precept" in claim construction jurisprudence that patentees cannot "recapture through claim interpretation specific meanings disclaimed [*19] during prosecution." n50 This "promotes the public notice function of the intrinsic evidence and protects the public's reliance on definitive statements made during prosecution." n51 [HN7] Although prosecution disclaimer does not attach where the "alleged disavowal of claim scope is ambiguous," n52 an unequivocal disavowal of a particular meaning advanced by the patentee to overcome the prior art and obtain the patent narrows the "ordinary meaning of the claim congruent with the scope of surrender." n53 Notably, "when multiple patents derive from the same initial application, the prosecution history regarding a claim limitation in any patent that has issued applies with equal force to subsequently issued patents that contain the same claim limitation." n54

n48 *Metabolite Labs.*, 370 F.3d at 1360.

n49 *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1325 (Fed. Cir. 2002) (quoting *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1347 (Fed. Cir. 1998)).

n50 *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003).

[*20]

n51 *Id.* at 1324.

n52 *Id.* *See also Gemstar-TV Guide Int'l, Inc. v. International Trade Comm'n*, 383 F.3d 1352, 2004 U.S. App. LEXIS 19368, 2004 WL 2059279 (Fed. Cir. 2004).

n53 *Omega Eng'g*, 334 F.3d at 1324. *See also id.* at 1325 ("To balance the importance of public notice and the right of patentees to seek broad patent coverage, we have thus consistently rejected prosecution statements too vague or ambiguous to qualify as a disavowal of claim scope.").

n54 *Elkay Mfg.*, 192 F.3d at 980.

B. Claim Definiteness

[HN8] "If the court finds that a claim is not 'amenable to construction,' then the claim is invalid as indefinite under section 112 of the Patent Act," n55 which requires the claims of a patent to "particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention." n56 The definiteness inquiry is directed to whether persons with ordinary skill in the art would comprehend the scope of the claim when read against the specification. n57 Because a claim [*21] is statutorily presumed to be valid, it does not fail for indefiniteness simply "because it poses a difficult issue of claim construction." n58 Rather, "if the claim is subject to construction, i.e., it is not insolubly ambiguous, it is not invalid for indefiniteness." n59 Thus, even where a court's construction of the claim is one over which reasonable minds will disagree, the claim is, nonetheless, clear enough to survive the test of invalidity for indefiniteness. n60 Where the question of validity under section 112 is close, it is resolved in favor of the patentee. n61

n55 *Honeywell Int'l, Inc. v. International Trade Comm'n*, 341 F.3d 1332, 1338 (Fed. Cir. 2003) (quoting *Exxon Research and Eng'g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001)). Whether a claim satisfies this "definiteness" requirement is a question of law. See *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004).

n56 35 U.S.C. § 112, P 2.

n57 See *Union Pac. Res. v. Chesapeake Energy Corp.*, 236 F.3d 684, 692 (Fed. Cir. 2001).

[*22]

n58 *Bancorp Servs.*, 359 F.3d at 1371.

n59 *Id.*

n60 *Exxon Research and Eng'g*, 265 F.3d at 1375 ("If a claim is insolubly ambiguous, and no narrowing construction can properly be adopted, we have held the claim indefinite. If the meaning of the claim is discernible, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree, we have held the claim sufficiently clear to avoid invalidity on indefiniteness grounds."). See also *id.* (noting that the court "protects the inventive contribution of patentees, even when the drafting of their patents has been less than ideal").

n61 See *Bancorp Servs.*, 359 F.3d at 1371; see also *Union Pac. Res.*, 236 F.3d at 692 (noting that to rebut the presumption of validity, the burden of proof is clear and convincing evidence of patent invalidity).

III. DISCUSSION

The parties have agreed on definitions for: (1) apices ("points at the two longitudinal ends of a cell of a stent"); (2) arc ("[a] curved line or segment [*23] of a circle"); (3) area of inflection ("[a] portion of a stent element that is bent, i.e., a loop"); (4) disposed apart and generally opposite to ("structural elements positioned across from and approximately aligned with each other"); (5) disposed between ("positioned in the space that separates structural elements"); (6) member ("[a] structural element"); and (7) stent ("[a] device made of a bodycompatible material, used to widen a blood vessel or other body opening (also called a 'lumen'), and to maintain the resultant size of the blood vessel or lumen"). n62 This leaves twelve terms to be construed, which I will discuss seriatim.

n62 Proposed Claim Terms for Construction and Proposed Definitions ("Claim Chart"), Ex. 1 to Medinol's Memorandum of Law in Response to Guidant's Memorandum of Law on Claim Construction ("Pl. Reply").

A. "Meander" or "Meander Pattern," "First Meander" or "First Meander Pattern," "Second Meander" or "Second Meander Pattern"

The meander terms appear in claims: 13, 16, [*24] 27, and 28 of the '120 Patent; and 1, 2-15, and 17 of the '982 Patent. n63 Medinol contends that "meander" or "meander pattern" should be defined as "a periodic or repeating pattern about a center line," and that first and second meanders "identify and differentiate two sets of meanders (or meander patterns)." n64 Guidant (1) defines "first meander" as "[a] periodic sinusoidal pattern that is uniformly distributed about a center line and extends circumferentially [equivalent to vertically in Medinol's patent figures] around a stent" n65 and (2) finds "second meander" to be indefinite. n66 The parties agree that there is no customary meaning for these terms and that Medinol, in using them, has acted as its own lexicographer. n67 Accordingly, the Court looks to the patent specification and file history for guidance.

n63 See '120 Patent, col. 7, ll. 16-17, 19, 21-25, 41-42, col. 8, ll. 45-51; '982 Patent, col. 6, ll. 32-33, 35-36, 37, 40-43, 45-48.

n64 Pl. Mem. at 13. In the Claim Chart, Medinol words this slightly differently, equating "meander" with "[a] periodic or repeating pattern of structural elements oriented about a center line" and first and second meanders that "identify and differentiate two different patterns." Claim Chart at 4.

[*25]

n65 Guidant's Memorandum of Law on Claim Construction (filed under seal) ("Def. Mem.") at 12.

n66 See *id.* at 14; see also 35 U.S.C. § 112, P 2. Guidant adds that "to the extent that this term can be construed . . . it should be construed as a periodic pattern that is uniformly distributed about a center line from one longitudinal end of the cell to the other." See Claim Chart at 4.

n67 See Pl. Mem. at 13 ("For these terms, the patentees acted as their own lexicographer and clearly set forth a different definition than the plain meaning.") (quotation marks and citation omitted); Def. Mem. at 13 ("It cannot be disputed that the term 'meander' has no ordinary meaning in stent design."); see also Tr. at 43 (statement of Dorothy Auth, counsel for Medinol).

The specification for the '303 Patent provides that "the term 'meander pattern' is taken herein to describe a periodic pattern about [a] center line and 'orthogonal meander patterns' are patterns whose center lines are orthogonal to each other." n68 The summary of the invention explains: [*26]

The stent of the present invention is formed of a tube . . . which has first and second meander patterns having axes extending in first and second directions wherein the second meander patterns are intertwined with the first meander patterns. The first and second directions *can be* orthogonal to each other. n69

In the description of the preferred embodiments, it is further explained that "the present invention encompasses all stents manufactured with a pattern formed of two meander patterns, orthogonal *or otherwise*." n70 Accordingly, while the first and second meanders can be orthogonal to one another, the patentee also contemplates that the meander patterns could be "otherwise" oriented. The inclusion in the patent specification of a non-orthogonal arrangement of the first and second meander patterns forecloses Guidant's suggestion that circumferential and longitudinal directions be assigned to the meanders. n71

n68 '303 Patent, col. 2, ll. 57-60.

n69 *Id.* col. 1, ll. 55-60 (emphasis added).

n70 *Id.* col. 4, ll. 36-38 (emphasis added).

n71 Moreover, to so limit the meanders would render some of the claims redundant, violating the canon of "claim differentiation." *Karlin Tech. Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 972 (Fed. Cir. 1999). This

principle is not a "rigid rule" and is "ultimately based on the common sense notion that different words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope [and] normally means that the limitations stated in dependent claims are not to be read into the independent claim from which they depend." *Id.*

For example, claim 1 of the '982 Patent describes:

1. An expandable stent for supporting a vessel, wherein in the expanded and deployed state, the stent consists of:
 - (a) first meander patterns having loops, the first meander patterns being longitudinally spaced from each other and having axes extending in a first direction; and
 - (b) second meander patterns having loops, the second meander patterns having axes extending in a second direction, different than the first direction
 - [(c)-(e) omitted]

'982 Patent, col. 6, ll. 29-36. Claim 3 asserts a "stent according to claim 2 and wherein said first direction extends in a circumferential direction." *Id.* col. 6, ll. 51-52. Claim 4 discloses a "stent according to claim 3, wherein the second direction extends in a longitudinal direction." *Id.* col. 6, ll. 53-54. To ascribe circumferential and longitudinal directions to the first and second meanders would render the words "circumferential" and "longitudinal" in claims 3 and 4 irrelevant.

[*27]

However, the written description of the patent clearly provides that the first meander is sinusoidal about a center line. The written description states that "meander pattern 11 is a vertical sinusoid having a vertical center line 9." n72 Accordingly, the term "first meander" is construed as follows: a periodic sinusoidal pattern about a center line. n73 The phrase "second meander" is not indefinite. Rather, it is defined as a periodic pattern about a center line oriented in a direction different from the axis of the first meanders. n74

n72 '303 Patent, col. 2, ll. 63-64 (referencing Figures 1-4).

n73 Guidant would also include the phrase "uniformly distributed" in the definition of a first meander, arguing that the ordinary meaning of "center line" is a "real or imaginary line that is equidistant from the surface or sides of something." Webster's Ninth New Collegiate Dictionary (1991), *cited in* Guidant's *Markman* Hearing Slide Presentation at 12. Thus, the phrase "about a center line" requires that the meander pattern be uniformly distributed about the line. But the meaning of "uniformly distributed" is adequately captured by the words "center line." To use both "uniformly distributed" and "center line" would be needlessly redundant.

[*28]

n74 *See* '303 Patent, col. 3, ll. 3-4.

B. "Loop"

Loop is contained in claims: 13, 16, 18, 27, and 28 of the '120 Patent; 1, 2-15, and 17 of the '982 Patent; and 61 and 68 of the '381 Patent. n75 Medinol proposes the following plain meaning definition for "loop": "[a] structural element[] that turns back on [itself]." n76 Guidant submits that Medinol did not use the word consistently with its ordinary meaning and defines "loop" as a "C- or U-shaped structure." n77

n75 *See* '120 Patent, col. 7, ll. 19-20, 23, 42-43, col. 8, ll. 14, 20, 46; '982 Patent, col. 5, ll. 31, 34, 40, 46, 49, 60; '381 Patent, col. 10, ll. 33, 35, col. 11, ll. 18, 20.

n76 Pl. Mem. at 16.

n77 Def. Mem. at 16.

The intrinsic record makes clear Medinol's intent to define "loop" to mean a C- or U-shaped structure rather than simply a structural element that turns back on itself. *First*, the patents-in-suit neither describe [*29] nor depict a "loop" as an element that turns back on itself. Rather, "loop" is consistently used to identify structures that are either C- or U-shaped. n78 *Second*, the Pinchasik '373 Patent, a predecessor to the patents-in-suit, tellingly does not use the word "loops," but uses "kinks" to describe its lightning bolt, or S-shaped, curves. n79 By contrast, the '303 Patent provides that "meander pattern 11 has two loops 14 and 16 per period wherein loops 14 open to the right while loops 16 open to the left." n80 Loops 14 and 16 are clearly C-shaped structures and are dissimilar from the "kinks" presented in the Pinchasik '373 Patent. n81 Thus, the designs disclosed in the patents-in-suit no longer contain "kinks," but "loops." But Medinol's proposed definition - a structural element that turns back on itself - would cover both kinks and loops as used in the patent specification. Based on the foregoing, Medinol imparted special meaning to the word "loop," using it to describe a structural element that is either C-shaped (loops associated with the first meander) or Ushaped (loops associated with the second meander). n82

n78 In some instances, the ends of the "loop" even turn outward. *See, e.g.*, '303 Patent, Figure 8 (depicting an expanded stent).

[*30]

n79 *See* Pinchasik '373 Patent, col. 4, ll. 63-68; *see also id.* Figures 3A, 3B, 3C.

n80 '303 Patent, col. 2, ll. 64-66. *See also id.* Figures 1-4.

n81 *See id.* Figures 1-4.

n82 *See id.* col. 2, ll. 64-66 (describing meander pattern 11, which is the first meander pattern); *id.* col. 3, ll. 4-7 (noting that meander pattern 12, the second meander, has loops that open downward (loop 18) and upwards (loop 20)); *see also* Figures 1-4. The same structure is disclosed in the other embodiments of the stent design. *See id.* col. 5, ll. 6-13 ("The stent also includes a first loop 63 defining a first angle 64 disposed between the first end 52 of the first member 51 and the first end 55 of the second member 54. A second loop 65 defining a second angle 66 is disposed between the second end 59 of the third member 57 and the second end 62 of the fourth member 60 and is disposed generally opposite to the first loop 63); col. 4, ll. 5-9 (describing loops); *see also id.* Figures 5A-5B, 7-8.

C. "Spaced Apart" or "Longitudinally Spaced From"

"Spaced apart" or "longitudinally [*31] spaced from" is used in claims: 27 and 28 of the '120 Patent; and 1, 2-15, and 17 of the '982 Patent. n83 Medinol defines "spaced apart" as "separated" and "longitudinally spaced from" as "separated along the longitudinal axis." n84 Guidant, by contrast, submits that the terms mean "the apices of adjacent cells along the longitudinal axis are separated from one another in space *by a flexible connector*." n85

n83 *See* '120 Patent, col. 8, l. 16; '982 Patent, col. 6, l. 32.

N84 Claim Chart at 4.

n85 Def. Mem. at 20 (emphasis added).

The words "spaced apart" and "longitudinally spaced from" are used in the asserted claims consistently with their accustomed meaning. In other words, "spaced apart" means "separated" and "longitudinally spaced from" means "separated along the longitudinal axis." n86 For instance, claim 21 of the '120 Patent, upon which asserted claims 27 and 28 depend, discloses:

A stent formed of a tube having a patterned shape, the patterned shape comprising:

- a. first meander patterns [*32] having axes extending in a first direction;
- b. second meander patterns having axes extending in a second direction, different than said first direction, wherein said second meander patterns intersect with said first meander patterns;
- c. wherein said first meander patterns have loops;
- d. wherein said first meander patterns are spaced apart to leave a portion of said second meander patterns between each pair of adjacent first meander patterns;
- e. wherein each of said second meander patterns has at least one loop between at least one pair of adjacent first meander patterns. n87

The claim language makes clear that the term "spaced apart" means separated - *i.e.*, that the first meanders are placed at some distance from one another. That part of the second meander pattern (a loop) is positioned in the space between first meanders is an *additional* limitation, independent from the words "spaced apart."

n86 See Webster's New World Dictionary 1363 (2d Coll. ed. 1974 ("New World Dictionary"), Ex. I to the 8/20/04 Declaration of Fabian D. Gonell, counsel for Medinol ("Gonnell Decl.") (defining "spaced" as "to arrange with space or spaces in between"), *cited in* Medinol's *Markman* Hearing Slide Presentation ("Pl. Sl.") at 47; *see also id.* at 63 (defining "apart" as "separately or away in place or time), *cited in* Pl. Sl. at 47.

[*33]

n87 '120 Patent, col. 8, ll. 6-20.

The prosecution history cited by Guidant fails to contradict this conclusion. Medinol argued to the PTO that "the claims have been amended to make clear that the first meander patterns are spaced from each other *and* that the loop is in the space between meander patterns, a limitation discussed at the interview as better defining the relationship." n88 It follows from this statement that "spaced apart" is used to describe only the relative position of the first meander patterns, not the entire structure of the stent. Accordingly, there is no basis for requiring a loop of the second meander to fill the space between first meanders. Thus, Guidant has failed to demonstrate that Medinol intended for these terms to be used in a manner contrary to their plain and ordinary meaning and "spaced apart" and "longitudinally spaced from" are thus respectively defined as "separated" and "separated along the longitudinal axis."

n88 4/8/02 Response to Office Action Under 37 C.F.R. § 1.111 from U.S. Application No. 09/489,362 (Paper # 15), Ex. 37 to Lee Aff. at 12 (emphasis added).

[*34]

D. "Enclosed Spaces"

The phrase "enclosed spaces" appears in claims: 13, 16, and 18 of the '120 Patent; and 6 and 7 of the '982 Patent. n89 Medinol contends that the phrase "enclosed spaces" is used consistent with its ordinary meaning, referring to "the area defined by the structural elements of a cell." n90 Alternatively, Guidant construes this term as simply identifying "[a] cell." n91

N89 See '120 Patent, col. 7, l. 26; '982 Patent, col. 6, ll. 59, 61-62.

n90 Pl. Mem. at 16. Medinol notes that the "plain meaning of 'enclose' is to 'close in' or 'surround,'" *id.* (citing Webster's Third International Dictionary 746 (1976) ("Webster's Third"), Ex. J to Gonnell Decl., and New World Dictionary at 460), and "space" is ordinarily defined in contexts such as this as "the distance, expanse, or area . . . within . . . things," *id.* (citing Webster's Third at 2180 (definition 2a) and New World Dictionary at 1363 (definition 2a)).

n91 Def. Mem. at 24.

Guidant's proposed definition is improper [*35] for at least two reasons. *First*, "enclosed space" is distinguished from "cell" in the patent specification. For instance, in describing Figure 4 of the '303 Patent, the patentee includes the following language: "When the stent expands, both meander patterns 11 and 12 expand (i.e. all loops 14-20 open up). As can be seen, the expanded stent has two types of enclosed spaces, a large space 42 between meander patterns 12o and 12e and a small space 44 between meander patterns 12e and 12o." n92 As depicted in Figure 4, "enclosed spaces" refers to the area contained within first and second meander patterns. By contrast, the word "cell" is used to refer to the structural elements outlining the enclosed spaces. For example, in Figure 8, the invention is described as "an expandable stent defining a longitudinal aperture 80 having a longitudinal axis or extension 79 and a circumferential axis or extension 105, including a plurality of flexible connected *cells* 50 Each *cell* 50" n93

n92 '303 Patent, col. 3, ll. 51-55. *See also id.* Figure 4.

n93 *Id.* col. 4, ll. 57-62 (emphasis added).

[*36]

Second, the language cited by Guidant as supportive of its definition does not amount to an unambiguous disavowal of the claim scope, justifying a departure from Medinol's plain meaning definition for "enclosed spaces." That is, the specification states:

FIG. 8 illustrates the pattern of FIG. 7 in an expanded format. Since there are no even and odd horizontal meander patterns, in the expanded format of FIG. 8, there are no large and small spaces. Instead, all spaces are of the same size, i.e., the stent is comprised of a plurality of spaces or cells 50 defining a uniform cellular structure.

But this passage does not clearly indicate that "enclosed spaces" and "cells" are interchangeable terms used to identify the same structure. n94 One skilled in the art could have read the cited passage as suggesting that the uniform cellular structure is described as comprising either enclosed spaces or cells. n95 Because the cited language is not a clear disclaimer of the customary meaning of the word "enclosed spaces," and because this term is used consistently with its ordinary meaning in the specification, "enclosed spaces" is defined to mean the area enclosed by the structural elements [*37] of a cell.

n94 *Id.* col. 4, ll. 50-55.

n95 Moreover, the identifier "50" is placed on Figure 8 close to the perimeter of the structure; whereas on Figure 4, "42" is placed directly in the center of the area. This further suggests that "50" refers to the structure around the enclosed space, while "42" references the enclosed space itself. *See id.* Figures 4, 8.

E. "Cell"

"Cell(s)" is (are) used in claims: 28 of the '303 Patent; 51 of the '018 Patent, 56-58, 61, 63, 65-66, 68-70 of the '381 Patent. n96 Medinol asserts that "cell" and "cells" mean "an arrangement of structural elements that defines an enclosed space." n97 Guidant proposes the following definition for these terms: "A first and second loop at the two longitudinal ends and a first and second flexible link that define a small enclosed space." n98

n96 *See, e.g.*, '303 Patent col. 10, ll. 16, 23; '018 Patent col. 13, ll. 13, 18; '381 Patent, col. 10, ll. 11, 15, 31, 34, col. 11, ll. 2, 16, 19.

[*38]

n97 Pl. Mem. at 17. *Accord Cordis* Order at 2.

n98 Def. Mem. at 21.

The plain meaning of "cell" is, as the *Cordis* court found, an arrangement of structural elements that defines an enclosed space. n99 Guidant's suggested construction cannot be adopted because it is overly restrictive. This definition only relates to the preferred embodiment depicted in Figures 7 and 8, and excludes the preferred embodiment reflected in Figures 1-4. Specifically, Figure 4 contemplates a cell that has four loops at the longitudinal ends, two interior longitudinal loops, and two flexible links. n100 The text of the patent itself indicates that Figures 4, 7, and 8 collectively represent two different "preferred embodiments" of the invention. n101 Accordingly, to restrict the term "cell" to the manner in which it is represented for purposes of Figures 7 and 8 would improperly exclude another preferred embodiment of the invention. n102 Accordingly, the term "cell" is defined as an arrangement of structural elements that defines an enclosed space.

n99 *See Cordis* Order at 2.

[*39]

n100 *See* '303 Patent, Figure 4; *see also* Pl. Sl. at 79.

n101 '303 Patent, col. 2, ll. 24-26, 32-33, 38-41.

n102 *See Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339, 1347 (Fed. Cir. 2004) ("Apotex's construction also violates the principle that claims should rarely, if ever, be construed to exclude a preferred embodiment.").

F. "Flexible Cells"

The words "flexible cells" must be construed for purposes of claims: 28 of the '303 Patent; 51 of the '018 Patent, 56-58, 61, 63, 65-66, 68-70 of the '381 Patent. n103 Medinol proposes that "flexible cell" should be defined as "an arrangement of structural elements that defines an enclosed space and that is capable of being bent or flexed." n104 Guidant interprets "flexible cells" as follows: "A first and second loop at the two longitudinal ends and a first and second link that define a small enclosed space. The cells must be substantially flexible prior to expansion of the stent and substantially rigid after expansion of the stent." n105

n103 *See* '303 Patent, col. 10, ll. 16-17, 20, 23; '018 Patent, col. 13, ll. 11, 14; '381 Patent, col. 9, ll. 59-61, col. 10, ll. 21, 39, 46, col. 11, ll. 3, 11, 25.

[*40]

n104 Pl. Mem. at 18.

n105 Def. Mem. at 23.

As Guidant argues, Medinol's stent design "hinges on 'flexible cells' being flexible before expansion and rigid afterward." n106 Indeed, during prosecution, Medinol unambiguously imparted a particular meaning to "flexible cell." For example, Medinol distinguished its invention from the prior art, stating:

The articulated stent disclosed in the '373 patent is flexible only at the articulation points where the connectors connect the substantially rigid segments. In contrast, the Applicant's invention and the pending claims are directed to a flexible expandable stent whose unique meander patterns and structure define a plurality of flexible expandable cells that are substantially flexible prior to expansion of the stent and

substantially rigid after expansion of the stent that permit the stent to be substantially uniformly flexible along its entire length prior to expansion of the stent. n107

This explanation makes quite clear that Medinol intended for the phrase "flexible cell" to have a meaning altogether different from a compilation of dictionary [*41] definitions for the words "flexible" and "cell." A significant aspect of the invention, "flexible cell" has a special meaning, referring to cells that are flexible prior to expansion and rigid upon expansion. Thus, flexible cell is construed as follows: An arrangement of structural elements that defines an enclosed space. The cells must be substantially flexible prior to expansion of the stent and substantially rigid after expansion of the stent.

n106 Guidant's Reply Brief on Claim Construction ("Def. Reply") at 14.

n107 3/20/98 Response Under 37 C.F.R. § 1.111 from U.S. Application No. 08/881,594 (Paper # 5), Ex. 23 to Lee Aff., at 8. *See also* 1/4/01 Supplemental Information Disclosure Statement ("IDS") from U.S. Application No. 09/337,629 (Paper # 12), Ex. 38 to Lee Aff., at 7 ("These deficiencies in scaffolding are attributable to the fact that the Burmeister Figure 14 design is not a flexible 'closed cell' design, as claimed in the Medinol patents."). Contrary to Medinol's arguments, this language plainly reveals that Medinol intended this disclaimer to apply to the entire stent design, not just the particular claims then in dispute. *See Digital Biometrics*, 149 F.3d at 1347 ("The public has a right to rely on such definitive statements made during prosecution. Notice is an important function of the patent prosecution process, as reflected by [35 U.S.C. § 112, P 2] and recently confirmed by the Supreme Court. Absent qualifying language in the remarks, arguments made to obtain the allowance of one claim are relevant to interpreting other claims in the same patent.") (citations omitted).

[*42]

G. "Flexible Link"

The following claims incorporate the phrase "flexible link": 28 of the '303 Patent; 51 of the '018 Patent, 56-58, 61, 63, 65-66, 68-70 of the '381 Patent. n108 For Medinol, "flexible link" means "a structural element that is flexible with respect to the stent's longitudinal axis and must be aligned along the longitudinal axis of the stent." n109 Guidant views a "flexible link" as "[a] structural element connecting the apices of adjacent cells, that is flexible and aligned with respect to the stent's longitudinal axis." n110

n108 *See* '303 Patent, col. 10, ll. 23-24; '018 Patent, col. 13, ll. 15-16, 19, 24-25, 27; '381 Patent, col. 9, ll. 66-67, 69-70, col. 10, ll. 2-3, 6, 8, 21, 24, 49, 52, 56-57, 61, 63, col. 11, l. 22.

n109 Pl. Mem. at 19. *Accord Cordis* Order at 3 (defining "flexible compensating member or flexible link").

n110 Def. Mem. at 24.

The parties' disagreement over this term arises from Guidant's proposed inclusion of a requirement that the flexible links connect the "apices of adjacent cells." n111 During prosecution, the patentee distinguished the Palmaz '417 Patent by explaining that:

Applicants have also amended Claim 1 to include the limitations of Claim 3 to adjacent cells of adjacent rigid segments. This is in contrast to Palmaz '417 and Cardon whose links are spiral-shaped and therefore, do not connect the apices of adjacent segments. Instead, they connect the apex of a first cell on one segment with the apex of a second cell (of the second segment) which is shifted from the one which is adjacent to the first cell. n112

This statement reveals that (1) the Palmaz '417 and the "Cardon" Patents connect the apices of non-adjacent cells and (2) the key distinction between claim 1 of the Pinchasik '373, as amended, and the prior art, was the requirement that the flexible links connect the apices of *adjacent* cells. n113 The amendment related not to the

"apices" of the cells, but to the relative location of the connected cells (adjacent versus non-adjacent). The use of flexible links to connect adjacent segments was intended to improve upon designs based on the prior art by avoiding twisting on expansion. It is therefore logical to impart the following definition to the term "flexible link": a structural element connecting adjacent cells that is flexible and aligned with respect to the stent's longitudinal axis.

[*43]

n111 *Id.* See also Pl. Sl. at 93.

n112 2/17/95 Amendment Under Rule 116 from U.S. Application No. 08/213,272 (Paper # 9), Ex. 20 to Lee Aff., at 2-3.

N113 The *Cordis* court found that this language clearly indicated that although "neither the prosecution history nor the specification require that the physical connection be made at points directly opposite" to one another, "a flexible compensating member or flexible link must connect adjacent cells." *Cordis* Order at 3 n.2.

H. "Substantially Uniform Structure of Flexible Cells"

The words "substantially uniform structure of flexible cells" are used in claim 28 of the '303 Patent. n114 Medinol argues that this term refers to "a stent structure that has a largely repeating distribution of flexible cells that have nearly the same structure." n115 Guidant contends it means "all of the cells of the stent have substantially the same structure." n116

n114 See '303 Patent, col. 10, l. 17.

[*44]

n115 Pl. Mem. at 27.

n116 Def. Mem. at 25.

The phrase "uniform structure of flexible cells" was construed by the *Cordis* court for purposes of claim 12 of the '303 Patent. That court determined that the phrase means "the flexible connected cells of claim 6 have the same structure." n117 This construction draws from the patent specification, where the patentee states, with respect to Figure 8, that "all spaces are of the same size, i.e., the stent is comprised of a plurality of spaces or cells 50 defining a uniform cellular structure." n118 The parties agree that this definition is the foundation upon which the meaning of the word "substantially," denoting approximation, must be built. n119 Given that "uniform structure of flexible cells" means "the flexible connected cells . . . have the same structure," it is clear that the word "uniform" is taken to modify the structure, rather than the overall arrangement, of the flexible connected cells. The word "substantial," then, also modifies the structure of the cells - i.e., as Guidant indicates, the phrase "substantially uniform structure [*45] of flexible cells" means that all of the flexible connected cells have approximately the same structure. n120

n117 *Scimed Life Sys.*, 87 Fed. Appx. at 735 (affirming the finding of the district court as to this claim term).

n118 '303 Patent, col. 4, ll. 53-55.

n119 See *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1360 (Fed. Cir. 2003) ("The term 'substantially,' as used in this context, denotes approximation."), *cert. denied*, 540 U.S. 1213, 158 L. Ed. 2d 141, 124 S. Ct. 1426 (2004); see also Tr. at 91 (statement of Keith Hummel, counsel for Medinol) ("Judge Robinson did not construe our term, but she construed . . . uniform cellular structure. And she said uniform cellular structure is the flexible connected cells of claim 6 have the same structure. . . . We have taken her language, have the same

structure, and changed it to nearly the same structure, which is a term of approximation."); *id.* at 143 (statement of Christine Lehman, counsel for Guidant) ("Judge Robinson told us, uniform cellular structure means flexible connected cells of claim 6 have the same structure. So we know that. And this actually was the one claim construction issue that the federal circuit did address.").

[*46]

n120 Medinol's primary objection to Guidant's proposed construction of this term relates to the use of the word "including" in the claim language. Specifically, the claim reads, in relevant part: "An expandable stent, *including*: a plurality of connected cells having a longitudinal axis defining a substantially uniform structure of flexible cells having a longitudinal axis and a circumferential axis substantially perpendicular to said longitudinal axis" '303 Patent, col. 10, ll. 14-19 (emphasis added). Defining the word "including" to mean less than all, Medinol asserts that, according to the specification, not all of the cells can have substantially the same structure. But Medinol has explicitly made statements to the contrary, arguing that notwithstanding the patentee's use of the word "including" in claim 12 of the '303 Patent, the term "uniform structure of flexible cells," refers to "all cells of the stent." *See* Medinol's Brief in Support of Its Appeal in the *Cordis* Action (filed under seal), Ex. 48 to 9/9/04 Affirmation of Robert F. Shaffer, counsel for Guidant, at 37-39. Accordingly, Medinol's argument for a restrictive reading of "including" fails.

[*47]

I. "Substantially Uniformly Flexible (with Respect to Its Longitudinal Axis)"

"Substantially uniformly flexible (with respect to its longitudinal axis)" is referenced in claim 51 of the '018 Patent. n121 Medinol interprets this phrase to mean "the stent's flexibility is nearly the same as one moves along the longitudinal axis of the stent." n122 Guidant defines it as follows: "The structural elements of the cells provide longitudinal flexibility, such that the flexibility of the stent is substantially uniform only prior to expansion, as one moves along the longitudinal axis of the stent." n123

n121 *See* '018 Patent, col. 13, ll. 4-6 ("A generally longitudinally extending tubular stent which is substantially uniformly flexible with respect to its longitudinal axis, said stent consisting essentially of . . .").

n122 Pl. Mem. at 28.

n123 Def. Mem. at 26.

The *Cordis* court construed two phrases similar to the term disputed here. *First*, "stent which is substantially uniformly flexible [*48] with respect to its longitudinal axis by the flexibility of its cells with respect to said axis," n124 was defined as: "The structural elements of the cells provide longitudinal flexibility such that the flexibility of the stent is substantially uniform as one moves along the longitudinal axis of the stent." n125 *Second*, "said loops adapted so that said stent prior to expansion is substantially uniformly flexible along its longitudinal axis," n126 was construed as: "The first loops and second loops must be oriented in different directions, one a generally vertical direction and one a generally horizontal or longitudinal direction, to provide substantially uniform flexibility to the unexpanded stent as one moves longitudinally along the stent." n127

n124 '018 Patent, col. 12, ll. 25-28.

n125 *Cordis* Order at 7.

n126 '018 Patent, col. 10, ll. 66-67-col. 11, l. 1.

n127 *Cordis* Order at 6.

The parties concur that the primary difference between their respective proposals is Guidant's assertion [*49] that the stent is substantially uniformly flexible only prior to expansion. n128 But inclusion of the phrase "only prior to ex-

pansion" in the construction is needlessly repetitive. When used elsewhere in the patent, the phrase "substantially uniformly flexible" is coupled with the words "prior to expansion of the stent," suggesting that including "prior to expansion of the stent" in the definition of "substantially uniformly flexible" would be unnecessarily duplicative. n129 Accordingly, the term is defined to mean: the flexibility of the stent is substantially uniform as one moves along the longitudinal axis of the stent.

n128 *See, e.g.*, Pl. Reply at 20; Def. Reply at 17.

n129 For instance, Claim 39 of the '018 Patent contains the following language: "a plurality of flexible cells provided with a plurality of first loops and a plurality of second loops, said loops adapted so that said stent *prior to expansion* is substantially uniformly flexible along its longitudinal axis" '018 Patent, col. 10, ll. 65-67-col. 11, l. 1.

[*50]

J. "Portion with a Substantial Longitudinal Component"

Claims 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent contain references to "portion with a substantial longitudinal component." n130 Medinol proposes that this term means "a part of a member that has ends at positions a discernable distance from each other with respect to the stent's longitudinal axis." n131 Guidant suggests a different definition: "A stent element that is substantially more horizontal than vertical along the stent's horizontal [*i.e.*, longitudinal] axis." n132 The *Cordis* court defined a similar term, "member having a longitudinal component," as follows: "A 'member' is a structural element that has its ends at different longitudinal positions with respect to the stent's longitudinal axis. A member's 'longitudinal component' is the distance between the longitudinal positions of the first and second ends of the member." n133

n130 '381 Patent, col. 10, ll. 12-13, 66-67.

n131 Pl. Mem. at 23.

n132 Def. Mem. at 27.

n133 *Cordis* Order at 2.

[*51]

The parties' dispute stems from their conflicting views as to the plain meaning of the word "substantial." n134 Medinol suggests that the meaning of "substantial" as it relates to the disputed phrase, is captured by the construction, "a part of a member that has ends at positions a *discernable* distance from each other with respect to the stent's longitudinal axis." n135 Because substantial means "of or having substance," Medinol's use of "discernable" to describe "of or having substance" in this context is consistent with the ordinary meaning of "substantial." Guidant counters that "substantial" means that the stent element must be more horizontal than vertical, with respect to the longitudinal axis. This argument lacks merit, however, because it imposes an additional restriction supportable by neither the ordinary meaning of the words or the patent specification. That is, Guidant's definition requires that a portion with a substantial longitudinal component has a greater longitudinal length, when compared with its circumferential length. But imparting special meaning to the phrase is not warranted by the intrinsic record. Thus, "portion with a substantial longitudinal component" [*52] means a part of a member that has ends at positions a discernable distance from each other with respect to the stent's longitudinal axis.

n134 *See, e.g.*, Tr. at 150 (Lehman) (noting that the parties disagree as to the "plain meaning" of "substantial"); Pl. Sl. at 109 (presenting the "plain meaning" of the words); Def. Reply at 17 ("Medinol's definition is simply inconsistent with both the dictionary and any common understanding of 'substantial' and should be rejected."). Indeed, the specification uses these words in accordance with their accustomed meaning, and nothing in the intrinsic record suggests that Medinol intended for these words to have a special meaning for purposes of the asserted claims.

n135 Pl. Mem. at 23 (emphasis added). Medinol notes that the plain meaning of: (1) "'portion' is 'a part . . . of anything,'" *id.* at 24 (quoting New World Dictionary at 1110-11); (2) "'substantial' is 'having substance,'" *id.* (quoting New World Dictionary at 1420); (3) "'longitudinal' is 'of or in length' or 'running or placed lengthwise,'" *id.* (quoting New World Dictionary at 834 (defs. 1-2)); and (4) "'component' is 'an element or ingredient,'" *id.* (quoting New World Dictionary at 291).

[*53]

K. "Extension"

"Extension" must be defined for purposes of claims 28 of the '303 Patent and 51 of the '018 Patent. n136 Medinol would define "extension" to mean "dimension." n137 Guidant views this term as equivalent to "an axis." n138

n136 See '303 Patent, col. 10, l. 25; '018 Patent, col. 13, ll. 7-9, 13, 18.

n137 Pl. Mem. at 26.

n138 Def. Mem. at 28.

Defining "extension" as an "axis" makes little sense in light of the claim language. Claim 51 of the '018 Patent recites, in relevant part:

A generally longitudinally extending tubular stent which is substantially uniformly flexible with respect to its longitudinal axis, said stent consisting essentially of: a plurality of flexible cells, each having a longitudinal *extension* parallel to said longitudinal *axis* and a circumferential extension parallel to an arc of a circle around the circumference of the stent . . . n139

The use of the words "axis" and "extension" in the same clause indicates that Medinol intended for these [*54] words to have different meanings. n140 It is thus clear that "extension" does not mean "axis." The ordinary understanding of extension is "the property of a body by which it occupies space," or "dimension." n141 Because this definition is consistent with the intrinsic record, there is no reason to depart from it and therefore, "extension" is defined as dimension.

n139 '018 Patent, col. 13, ll. 4-10 (emphasis added).

n140 See *Ethicon Endo-Surgery, Inc. v. United States Surgical Corp.*, 93 F.3d 1572, 1579 (Fed. Cir. 1996) ("Admittedly, the claim says little about the structure of the 'pusher assembly.' It does clearly imply, however, that whatever 'pusher assembly' means, it is not a synonym for 'pusher bar.' . . . If the terms 'pusher assembly' and 'pusher bar' described a single element, one would expect the claim to consistently refer to this element as either a 'pusher bar' or a 'pusher assembly,' but not both, especially not within the same clause. Therefore, in our view, the plain meaning of the claim will not bear a reading that 'pusher assembly' and 'pusher bar' are synonyms."). Guidant cites the following language in support of its reading of "extension" as interchangeable with "axis": "As shown in FIGS. 3, 7 and 8, Applicants' invention can also be described as an expandable stent defining a longitudinal aperture 80 having a *longitudinal axis or extension* 79 and a circumferential axis or extension 105" '018 Patent, col. 4, ll. 58-61 (emphasis added). Even if this language is taken to mean that the terms "axis" and "extension" are interchangeable in the specification, the patentee uses the terms in Claim 51 in a manner strongly suggesting that "extension" has a meaning apart from "axis." Accordingly, even accepting Guidant's interpretation of the written description, it cannot trump the plain meaning of the word "extension."

[*55]

n141 Pl. Sl. at 119 (quoting New World Dictionary at 495-96).

L. "Circumferential Member," "First Circumferential Member" and "Second Circumferential Member"

"Circumferential member" is used in claims 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent. n142 Medinol argues that "circumferential member" means "a structural element extending in the circumferential direction," noting that the first and second circumferential members "identify and differentiate two different circumferential members." n143 By contrast, Guidant contends that the term "circumferential member" is indefinite under section 112, but to the extent that it can be construed, it should be defined as "a loop." n144

n142 See '381 Patent, col. 10, ll. 1, 5, 9-10, 13-14, 16-17, 22, 55, 59, 63-64, 67, col. 11, ll. 1, 12.

n143 Pl. Mem. at 21.

n144 Def. Mem. at 28, 30 n.16.

The term "circumferential member" is not indefinite. The parties [*56] agree that the term "member" means a structural element. n145 Circumferential, used in this context, relates to the circumferential direction. Nonetheless, Guidant submits that a circumferential member is merely a loop. This interpretation is rejected. *First*, Guidant does not identify any part in the intrinsic record limiting "circumferential member" to a loop. *Second*, as Medinol correctly notes, Guidant's proposed definition of "circumferential member" suffers from overinclusiveness, as it would include loops with "end points that are not displaced from each other with respect to the stent's circumferential axis, such as reference numerals 18 . . . and 20 of Figures 1-4." n146 Accordingly, the term "circumferential member" describes a structural element extending in the circumferential direction, and the first and second circumferential members identify and differentiate two different circumferential members.

n145 See Claim Chart at 1. Indeed, the language of claim 56 clearly describes a circumferential member:

56. A balloon expandable stent for implantation into a lumen to support the lumen, said stent both in the unexpanded state and in the balloon-expanded state including: a plurality of flexible cells adjacent to one another both circumferentially and longitudinally each of said flexible cells comprising:

- a) a first flexible link including an arc, the first flexible link having a first longitudinal end and a second longitudinal end;
- b) a second flexible link including an arc, the second flexible link having a first longitudinal end and a second longitudinal end;
- c) a first circumferential member disposed between said first longitudinal end of said first flexible link and said first longitudinal end of said second flexible link and;
- d) a second circumferential member disposed between said second longitudinal end of said first flexible link and said second longitudinal end of said second flexible link,
- e) at least one of said first circumferential member and said second circumferential member in each of said cells having a portion with a substantial longitudinal component that is also a portion with a substantial longitudinal component of a first circumferential member or a second circumferential member in a longitudinally adjacent cell,

wherein in the expanded state the first and second circumferential members have a substantial longitudinal component to provide coverage of the lumen.

'381 Patent, col. 9, ll. 56-57-col. 10, ll. 1-18.

[*57]

n146 Pl. Mem. at 23. See also '381 Patent, Figures 1-4.

IV. CONCLUSION

In sum, the disputed claim terms are defined as follows:

d Claim Term	Definition
1. Meander or Meander Pattern First Meander/ First Meander Pattern Second Meander/ Second Meander Pattern	A periodic pattern about a center line. A periodic sinusoidal pattern about a center line. A periodic pattern about a center line oriented in a direction different from the axis of the first meanders.
2. Loop "Spaced Apart" or 3. "Longitudinally Spaced From"	A C- or U-shaped structure. "Spaced apart" means separated. "Longitudinally spaced from" means separated along the longitudinal axis.
4. Enclosed Space(s)	The area enclosed by the structural elements of a cell.
5. Cell(s)	An arrangement of structural elements that defines an enclosed space.
6. Flexible Cells	An arrangement of structural elements that defines an enclosed space. The cells must be substantially flexible prior to expansion of the stent and substantially rigid after expansion of the stent.
7. Flexible Link	A structural element connecting adjacent cells that is flexible and aligned with respect to the stent's longitudinal axis. All of the flexible connected cells have approximately the same structure.
8. Substantially Uniform Structure of Flexible Cells Substantially Uniformly	The flexibility of the stent is substantially uniform as one moves along the longitudinal axis of the stent.
9. Flexible (with respect to its longitudinal axis)	A part of a member that has ends at positions a discernable distance from each other with respect to the stent's longitudinal axis.
10. Portion with a Substantial Longitudinal Component	A structural element extending in the circumferential direction.
11. Extension	Identify and differentiate two different circumferential members.
12. Circumferential Member First and Second Circumferential Member [*58]	

SO ORDERED: Shira A. Scheindlin

U.S.D.J.

Dated: New York, New York
September 30, 2004

Time of Request: August 24, 2005 09:06 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

3 of 10 DOCUMENTS

**MEDINOL LTD., Plaintiff, -against- GUIDANT CORP. and ADVANCED
CARDIOVASCULAR SYSTEMS, INC., Defendants.**

03 Civ: 2604 (SAS)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

341 F. Supp. 2d 301; 2004 U.S. Dist. LEXIS 10321

June 4, 2004, Decided
June 4, 2004, Filed

SUBSEQUENT HISTORY: Patent interpreted by Medinol Ltd. v. Guidant Corp., 2004 U.S. Dist. LEXIS 19705 (S.D.N.Y., Sept. 30, 2004)

DISPOSITION: [**1] Defendant Guidant's motion for summary judgment granted in part and denied in part.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff patent holder sued defendants, a corporation and its subsidiary, for patent infringement. Defendants moved for summary judgment on the basis of collateral estoppel.

OVERVIEW: The patents involved designs for balloon stents that were used to treat blocked arteries. The parties agreed that other patents constituted prior art as to the holder's asserted patent claims. In a previous infringement suit against third parties, different claims of some of the same patents were found to be invalid for obviousness. One claim was not found to be invalid, but the holder's argument that the verdict was therefore inconsistent was rejected on appeal; therefore, the holder's argument that an inconsistent verdict prevented application of collateral estoppel in the instant case failed. The holder was not estopped from litigating the alleged infringement of claims disclosing the limitation that previously was upheld. Other asserted claims differed from those previously held invalid only by including a width-related limitation, which did not distinguish the claimed combinations as a whole from the prior art; collateral estoppel

barred assertion of those claims. Other claims, however, were not substantially identical to the invalid claims; additional features, in combination with other elements of the claims, were not shown to have been disclosed in the prior art.

OUTCOME: Defendants' summary judgment motion was granted with respect to those claims that were substantially identical to the invalid claims; the motion was otherwise denied.

LexisNexis(R) Headnotes

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Claimed Invention as a Whole

Patent Law > U.S. Patent & Trademark Office Proceedings > Continuation Applications > General Overview

[HN1] See 35 U.S.C.S. § 103(a).

Patent Law > Anticipation & Novelty > General Overview

Patent Law > Statutory Bars > Public Use Bar > General Overview

Patent Law > Statutory Bars > On Sale Bar > General Overview

[HN2] 35 U.S.C.S. § 102(a), (b), and (e) provide, in part, that a person is not entitled to a patent if the invention was known or used by others or patented or de-

scribed in a printed publication before the invention thereof by the applicant for patent; or the invention was patented or described in a printed publication or in public use or on sale in the United States, more than one year prior to the date of the application for patent in the United States; or the invention was described in (1) an application for patent by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent.

Civil Procedure > State & Federal Interrelationships > Choice of Law

Patent Law > Jurisdiction & Review > Standards of Review > General Overview

[HN3] As a general principle, Federal Circuit precedent governs issues of patent law, while the law of the regional circuit applies to nonpatent matters.

Patent Law > Preclusion > Collateral Estoppel

[HN4] In the field of collateral estoppel, the United States Court of Appeals for the Federal Circuit has explained that the application of *Blonder-Tongue* is an issue of patent law and is therefore subject to Federal Circuit law. However, application of general collateral estoppel principles, such as finality of judgment, is not within the exclusive jurisdiction of the Federal Circuit, and, as such, is governed by the law of the regional circuit.

Patent Law > Preclusion > Collateral Estoppel

[HN5] In the patent infringement context, the legal standard for determining whether a patentee is collaterally estopped from asserting its alleged patent right was established by the United States Supreme Court in *Blonder-Tongue*. The Supreme Court has ruled that once the claims of a patent are held invalid in a suit involving one alleged infringer, an unrelated party who is sued for infringement of those claims may reap the benefit of the invalidity decision under principles of collateral estoppel.

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN6] Summary judgment is appropriate if the evidence of record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue of fact is genuine if the evidence is such that a jury could return a verdict for the nonmoving party. A fact is material when it might affect the outcome of the suit under the governing law.

Civil Procedure > Summary Judgment > Burdens of Production & Proof

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN7] A summary judgment movant has the burden of demonstrating that no genuine issue of material fact exists. In turn, to defeat a motion for summary judgment, the nonmoving party must raise a genuine issue of material fact. To do so, it must do more than simply show that there is some metaphysical doubt as to the material facts, and it may not rely on conclusory allegations or unsubstantiated speculation. In determining whether a genuine issue of material fact exists, the court must construe the evidence in the light most favorable to the nonmoving party and draw all inferences in that party's favor.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN8] Under the doctrine of collateral estoppel, or issue preclusion, a final judgment on the merits in a prior proceeding precludes relitigation of those issues that were actually litigated and determined in the first suit, regardless of whether the two suits are based on the same cause of action. The purpose of the doctrine is to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

Civil Procedure > Summary Judgment > Burdens of Production & Proof

[HN9] To prevail on a motion for summary judgment premised on collateral estoppel, the movant must satisfy the following elements: (1) the issues presented in the instant action are identical to those involved in the prior action; (2) the issues were actually litigated and decided in the prior action; (3) the estopped party had a full and fair opportunity to litigate the issues in the prior action; and (4) resolution of the issues was necessary to the final judgment. The movant bears the burden of demonstrating that the identical issue was decided in the prior proceeding, while the party against whom the collateral estoppel is asserted bears the burden of showing the absence of a fair and full opportunity to litigate.

Patent Law > Preclusion > Collateral Estoppel

Patent Law > Jurisdiction & Review > Subject Matter Jurisdiction > Appeals

[HN10] In the field of patent law, the United States Court of Appeals for the Federal Circuit has counseled that collateral estoppel may apply to patent claims that were not previously adjudicated, because the issues litigated, not the specific claims around which the issues were framed are determinative. There is no reason to employ a different approach in a patent context by looking to the claims litigated instead of to the issues that

were decided. Because claims in patents are routinely repeated and duplicated, varying one from the other only in certain minor details, it is unsurprising that each of these differently worded claims may present identical issues. The realities of patent practice suggest that, merely because the invention, the patentee's contribution to the art, is presented in varying language or varying combinations of elements does not necessarily mean that the issues bearing on the nonobviousness of that concept or contribution vary from one claim to the next. Accordingly, application of collateral estoppel in the context of patent validity is premised on the identity of those issues that were previously litigated.

Patent Law > Nonobviousness > Evidence & Procedure > Fact & Law Issues

Constitutional Law > Procedural Due Process > Scope of Protection

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN11] If a patentee has been heard on all the factual issues necessary to an obviousness determination, and that determination already has been made adversely to one claim, neither due process nor any provision of the patent statute require that the patentee be heard once again on those same issues and on the same obviousness determination simply because a different claim is involved.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

[HN12] Where obviousness is the basis for a prior invalidity holding in a patent case, an inquiry into the identity of the validity issue is properly phrased in terms of the factual inquiries mandated by Graham. The inquiry is whether the nonlitigated claims present new issues as to the art pertinent to the nonlitigated claims; as to the scope and content of that art; as to the differences between the prior art and the nonlitigated claims; and as to that level of ordinary skill in that art. If none of these inquiries raises any new triable issues, then the obviousness determination in the prior proceeding should be equally applicable to the nonlitigated claims.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Evidence & Procedure > General Overview

Patent Law > U.S. Patent & Trademark Office Proceedings > Continuation Applications > General Overview

[HN13] A court applying the Graham standard in a patent case should first compare the adjudicated and unadjudicated claims. If the scope of these claims is identical, then there are no new issues relating to the obviousness determination raised as to the nonlitigated claims. But, if this claim comparison reveals a substantive difference, it will be necessary to go a step further and determine whether those differences are of a kind that would have been itemized in a Graham analysis as a difference between the claim and the prior art, or whether it was known in the prior art and is only a part of the claimed combination as a whole that provides the context in which the obviousness determination is made. If it is only of the latter character, i.e., it is known in the prior art and does not alter the issue as to the differences between the claimed subject matter and the prior art, it is still necessary to assess the importance of the difference to the combination as a whole since it is from that standpoint that the obviousness determination must be made. Importantly, it is erroneous to compare a successively narrower claim with the one before it, and not with the prior art.

Patent Law > U.S. Patent & Trademark Office Proceedings > Continuation Applications > General Overview

Patent Law > Claims & Specifications > Definiteness > General Overview

Patent Law > Preclusion > Collateral Estoppel

[HN14] Although in applying the Graham analysis in a patent case, the practicalities are to look to the distinguishing features incorporated into the claims and the validity determination necessarily focuses on those features, the subject matter of the claim must be considered as a whole. Indeed, where the nonmovant effectively argues that the additional elements distinguish the claimed combination as a whole from the prior art, it is not enough for a movant to show that those elements are disclosed in the prior art. It is only where the claim comparison indicates that the additional elements recited in the unadjudicated claims do not distinguish the claimed combination as a whole from the prior art, that those newly asserted claims may not be litigated in a subsequent proceeding.

Patent Law > Preclusion > Collateral Estoppel

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN15] In applying the Graham analysis in a patent case, where the distinguishing features of the adjudicated and unadjudicated claims appear to be the same, and neither the text of the patent nor the plaintiffs attribute any importance or significance to the additional elements included in the unadjudicated claims, it is difficult to jus-

tify a further trial merely because of the presence of those elements in the claims.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

Criminal Law & Procedure > Double Jeopardy > Collateral Estoppel

[HN16] The United States Supreme Court has specifically distinguished the applicable collateral estoppel principles in criminal and civil contexts.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN17] The premise of collateral estoppel is that a party should be barred from relitigating issues already decided in a prior proceeding.

Patent Law > Preclusion > Collateral Estoppel

[HN18] The usual practice when the defense of estoppel is raised in a patent case is for the court to first consider whether the issue of invalidity common to each action is substantially identical and whether in the earlier suit the patentee had had a full and fair opportunity to litigate the issue of invalidity.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Inequitable Conduct > Effect, Materiality & Scien

Patent Law > Claims & Specifications > Claim Language > Multiplicity

[HN19] Although in general there is no "different" law of collateral estoppel for patent cases, patent cases undoubtedly raise unique concerns. The United States Supreme Court has described several economic considerations relating to the costly relitigation of patent validity issues. If estoppel is denied because multiple prior art references support the jury's finding of invalidity for obviousness, the implication will be that a jury verdict could only be accorded preclusive effect if the verdict rests on a single prior art reference. But this theory would require a full-blown obviousness analysis of every claim element, forcing a wasteful relitigation of every facet of obviousness regarding an invention that has already had its day in court. The test articulated by Westwood, Bourns, and Interconnect Planning does not require this.

Patent Law > Claims & Specifications > Claim Language > Multiplicity

Patent Law > Preclusion > Collateral Estoppel

[HN20] With respect to determining whether collateral estoppel applies in a patent case, in all but the simplest case of a subsequent suit involving identical claims, any potential savings in time, both for the parties and the

court, can be easily consumed by the motions, hearings, and briefs needed to evaluate and compare the issues raised by the claims. Naturally, if the estoppel is ultimately determined to be inapplicable to the unlitigated claims, the parties must proceed to trial and the total experience is a proceeding far lengthier than even the normally protracted patent case. This is not to say that in a case with multiple patents having both adjudicated and nonadjudicated claims, that an inquiry into the applicability of collateral estoppel, including a limited hearing for ascertaining the facts and avoiding duplicitous litigation, should not be held. There is a danger, however, where nonlitigated claims in a relatively complex technology are involved, that inquiry into the estoppel may just as easily perpetuate protracted litigation as eliminate it and it may well be as convenient to address the issues of validity on their merits.

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For Defendants: J. Michael Jakes, Esq., Christine E. Lehman, Esq., Finnegan, Henderson, Farabow, Garrett & Dunner LLP, Washington, DC. Shari L. Steinberg, Esq., Yun G. Lee, Esq., Swidler Berlin Shereff Friedman LLP, New York, NY.

JUDGES: Shira A. Scheindlin, U.S.D.J.

OPINIONBY: Shira A. Scheindlin

OPINION:

[*303] OPINION AND ORDER

SHIRA A. SCHEINDLIN, U.S.D.J.:

Medinol Ltd. ("Medinol") brings this action for damages and declaratory and permanent injunctive relief relating to the alleged infringement by Guidant Corp. ("Guidant") and its subsidiary Advanced Cardiovascular Systems, Inc. ("ACS") (collectively "defendants") of certain of Medinol's [*304] patents. n1 Guidant now moves for summary judgement on the basis of collateral estoppel, arguing that Medinol's prior litigation over three of its patents -- the '303, '120, and '018 -- in the *Cordis* case n2 precludes Medinol from asserting claims associated with [**2] Medinol's '303, '018, '120, '381, and '982 patents. n3 For the following reasons, Guidant's motion is granted in part and denied in part.

n1 At issue are the following patents, U.S. Patent Nos.: (1) 5,733,303 ("303 Patent"); (2) 5,843,120 ("120 Patent"); (3) 5,972,018 ("018 Patent"); (4) 6,443,982 ("982 Patent"); and (5) 6,461,381 ("381 Patent") (collectively "patents-in-suit"). Specifically, Medinol alleges that Guidant has willfully infringed Medinol's patents through the alleged manufacture, use, offer for sale, sale, and/or importation of MULTI LINK PENTA(R) and MULTI LINK ZETA TM systems, which contain stents for implantation in human vessels. Defendants have also asserted cross-claims, which are not at issue in this motion.

n2 *Scimed Life Sys., Inc. v. Johnson & Johnson*, 225 F. Supp. 2d 422 (D. Del. 2002), *aff'd*, 87 Fed. Appx. 729 (unpublished decision) (Fed. Cir. Jan. 14, 2004).

n3 Specifically, Guidant argues that Medinol is collaterally estopped from asserting all of the claims listed in the Complaint: 24 and 28 of the '303 Patent; 13, 16, 18, 27, and 28 of the '120 Patent; 51 and 64 of the '018 Patent; 1, 2-15, and 17 of the '982 Patent; and 56-58, 61, 63, 65-66, 68-70 of the '381 Patent. Only one of these claims was litigated in *Cordis* -- claim 13 of the '120 Patent, which the jury found to be not invalid and infringed.

[**3]

I. FACTS

A. The Parties

Medinol, which has its principal place of business in Tel Aviv, Israel, designs and manufactures coronary stents. n4 Guidant develops, markets, and sells cardiovascular medical products and has its principal place of business in Indiana. ACS has its principal place of business in California. n5

n4 Complaint P5.

n5 *Id.* PP6-7.

B. Background

At the heart of this litigation are patent rights directed to various balloon stent designs. "Stents" are "medical device[s] much like [] miniature scaffolding that physically hold[] open a diseased artery into which [they are] inserted." n6 They are "used to treat diseased blood vessels in the heart ('coronary arteries') and in

other areas of the body ('peripheral arteries')." n7 Stents are introduced into the blood vessel on a balloon catheter in a procedure during which the catheter is "maneuvered into the blocked artery [where the balloon is inflated, causing the stent to expand against the vessel wall]. [**4] . . . Once the balloon has been deflated and withdrawn, the stent stays in place permanently, holding the blood vessel open and improving blood flow." n8

n6 *Scimed Life Sys., Inc.*, 87 Fed. Appx. at 730.

n7 *Scimed Life Sys., Inc.*, 225 F. Supp. 2d at 425.

n8 Guidant, *Coronary Artery and Peripheral Vascular Disease*, Ex. 1 to 2/18/04 Declaration of Christine E. Lehman, Guidant's counsel, in Support of Guidant's Motion for Summary Judgment ("Lehman Decl."), at 13.

1. Prior Art

Prior to Medinol's development of its catheter-delivered coronary stents, various patents had been issued that the parties agree are "prior art" to the asserted claims of the Medinol patents for purposes of section 103(a). n9 These patents include [*305] U.S. Patent Nos.: (1) 4,739,762 ("Palmaz '762 Patent") [assigned to Expandable Grafts P'ship]; n10 (2) 5,102,417 ("Palmaz '417 Patent") [Expandable Grafts P'ship]; n11 (3) 5,104,404 ("Wolff '404 Patent") [Medtronic, Inc.]; n12 (4) 5,195,984 ("Palmaz-Schatz [*5] '984 Patent") [Expandable Grafts P'ship]; n13 (5) 5,421,955 ("Lau '955 Patent") [ACS]; n14 and (5) 5,879,370 ("Fischell '370 Patent"). n15

n9 35 U.S.C. § 103(a). This section states, in relevant part:

[HN1] A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Section 102 [HN2] provides, in relevant part, that a person is not entitled to a patent if:

(a) the invention was known or used by others . . . or patented or described in a printed publication . . . before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication . . . or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

[...]

(e) the invention was described in (1) an application for patent . . . by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent . . .

[**6]

n10 Palmaz '762 Patent (Apr. 26, 1988) B0958. References to "B____" are to pages in the appendix that Guidant submitted in connection with its Notice of Motion.

n11 Palmaz '417 Patent (Apr. 7, 1992) B0995.

n12 Wolff '404 Patent (Apr. 14, 1992) B1083.

n13 Palmaz-Schatz '984 Patent (Mar. 23, 1993) B1008.

n14 Lau '955 Patent (June 6, 1995) B1062.

n15 Fischell '370 Patent (Mar. 9, 1999) B1053. This is a continuation of a patent application filed on February 25, 1994.

The origins of the modern stent trace back to the 1980s. In April 1988, a patent was issued to Palmaz for an "expandable intraluminal graft, and method and appa-

ratus for implanting an expandable intraluminal graft," i.e., a "stent," which Johnson & Johnson commercialized in 1991. The Palmaz '762 Patent described the first stent to "include a plurality of closed cells" that, upon expansion, "transformed [from slot-shaped cells] into diamond-shaped cells, resulting in an expanded stent with a honeycomb appearance." n16 At approximately the same time, in furtherance of this design, Palmaz patented a stent (Palmaz [**7] '417 Patent) "combining slot-shaped cells with flexible connectors to increase longitudinal flexibility." n17 In 1992, Wolff designed a stent for Medtronic, Inc. that uses "coil connectors" to impart flexibility (Wolff '404 Patent). In 1995, Schatz developed a new variation of the Palmaz stent, involving "straight flexible connectors between tube sections" (Palmaz-Schatz '984 Patent). n18 In the early 1990s, Guidant developed its stent design based on "connecting single serpentine rings with flexible connectors," for which it obtained the Lau '955 Patent. n19 The designs disclosed in the Lau '955 Patent "illustrate two different ways of connecting the rings, 'in-phase' or 'out-of-phase.'" n20 Guidant commercialized the "in-phase" design as the "Multi-Link stent." Finally, in 1999, the Fischell '370 Patent was issued, which discloses a stent with "'undulating,' or looped [*306] connectors between rings that become circular when completely expanded." n21

n16 Guidant's Memorandum of Law in Support of Its Motion for Summary Judgment ("Def. Mem.") at 2.

n17 *Id.* at 3.

n18 *Id.*

n19 *Id.*

[**8]

n20 *Id.*

n21 *Id.* at 4.

2. Medinol's Patents

Medinol also successfully applied for patent protection of its stent design. In 1995, U.S. Patent No. 5,449,373 ("Pinchasik '373 Patent") was issued to Pinchasik et al. and assigned to Medinol. n22 A series of stents, described as continuations or continuations-in-part of the Pinchasik '373 Patent, were invented by Henry Israel and Gregory Pinchasik and assigned to Medinol. These patents -- the '303, '018, '120, '381, and '982 -- describe a family of flexible, expandable stents. Specifically, the *Cordis* court noted that Medinol's patents:

share the same drawings, and essentially the same specification, and are described as continuations of a series of applications beginning with Application Serial No. 282,181 . . . , filed on July 28, 1994, and continuations-in-part of Application Serial No. 213,272 . . . , which was filed on March 17, 1994, and issued as [the Pinchasik '373 Patent]. The Medinol patents generally describe and illustrate stent designs that achieve the objectives and flexibility during delivery, compensation [**9] for foreshortening, continuous uniform scaffolding, and resistance to radial deformation and collapse upon expansion. n23

n22 Pinchasik '373 Patent (Sept. 12, 1995) B0968. The parties disagree as to whether the Pinchasik '373 Patent, which was abandoned subsequent to its issuance, is "prior art" to the claims asserted in this action. Medinol's Local Rule 56.1 Counterstatement to Guidant's Rule 56.1 Statement of "Undisputed Facts" ("Pl. 56.1 Stmt.") P25.

n23 *Scimed Life Sys., Inc.*, 225 F. Supp. 2d at 425.

a. The '303 Patent

The '303 Patent was issued on March 31, 1998 and contains thirty-one claims. Two are alleged to be infringed by defendants' products -- 24 and 28. Claim 24 reads as follows:

A flexible connector for connecting the apices of cells included in a stent, including: a flexible member having a first end and a second end with an area of inflection disposed between said first end and said second end, a portion of said flexible member having a width smaller [**10] than the width of said apices to which said first end and said second end are connected. n24

Claim 28 refers to:

An expandable stent, including:

a plurality of connected cells having a longitudinal axis defining a substantially uniform structure of flexible cells having a longitudinal axis and a circumferential axis substantially perpendicular to said longitudinal axis;

each of said flexible cells having apices disposed apart and generally opposite to one another along said longitudinal axis of each of said cells;

each of said flexible cells having apices disposed apart and generally opposite to one another about the circumferential extension of the cell, each of said flexible links including at least two portions of an area of inflection therebetween. n25

n24 '303 Patent, col. 10, lines 1-7.

n25 *Id.*, col. 10, lines 10-11.

b. The '120 Patent

Eight months after the issuance of the '303 Patent, the '120 Patent was issued. Five of the claims are asserted [**11] in this [*307] action -- 13, 16, 18, 27, and 28, which, in seriatim, state:

13. An expandable stent formed of an elongated cylindrical unitary tube suitable for insertion into a lumen or blood vessel in which it may be expanded, comprising: a plurality of first meanders extending in a first direction on the cylinder of the tube and a plurality of second meanders extending in a second direction, on the cylinder of the tube, wherein the first and second meanders are formed with loops and are interconnected such that at least

one of the loops of each of the first meanders is disposed between each consecutive second meander to which the first meander is connected, and at least one of the loops of each of the second meanders is disposed between each consecutive first meander to which it is connected; the first and second meanders defining a plurality of enclosed spaces.

16. A stent according to claim 13, wherein the first and second meanders are connected together such that the loops thereof cooperate so that upon bending of the stents the loops change shape to compensate for the difference in length between the inside and outside curves.

18. A stent according to claim 13, wherein [**12] the stent can bend in any direction and in more than one direction at any time.

27. A stent according to claim 21 wherein said second meander patterns intersect with said first meander patterns so as to leave at least one loop of said first meander patterns between each pair of adjacent second meander patterns.

28. A stent according to claim 21 wherein said second meander patterns intersect with said first meander patterns at common members which are shared by said first and said second meander patterns.
n26

n26 '120 Patent, col. 7, lines 13-26; col. 7, lines 41-45; col. 7-8, lines 53-55, 1-2; col. 8, lines 44-47; col. 8, lines 48-51. Claim 21 describes:

A stent formed of a tube having a patterned shape, the patterned shape comprising:

- a. first meander patterns having axes extending in a first direction;

- b. second meander patterns having axes extending in a second direction, different than said first direction, wherein said second meander patterns intersect with said first meander patterns;

- c. wherein said first meander patterns have loops;

- d. wherein said first meander patterns are spaced apart to leave a portion of said second meander patterns between each pair of adjacent first meander patterns;

- e. wherein each of said second meander patterns has at least one loop between at least one pair of adjacent first meander patterns.

Id. col. 8, lines 6-21.

[**13]

c. The '018 Patent

The '018 Patent, issued on October 26, 1999, is comprised of sixty-four claims. Medinol is asserting claims 51 and 64, which disclose:

51. A generally longitudinally extending tubular stent which is substantially uniformly flexible with respect to its longitudinal axis, said stent consisting essentially of: a plurality of flexible cells, each having a longitudinal extension parallel to said longitudinal axis and a circumferential extension parallel to an arc of a circle around the circumference of the stent,

(a) wherein each of said flexible cells comprises apices disposed apart and generally opposite to one another along said longitudinal extension of the cell,

[*308] (b) wherein each of said flexible cells comprises at least first and second flexible links, wherein prior to expansion of the stent, the first and second flexible links are disposed apart and generally opposite to one another along the circumferential extension of the cell, and

(c) wherein each of said flexible links comprises a first attachment point and a second attachment point, the first and second attachment points being on a line segment that extends substantially parallel [**14] to said longitudinal axis prior to expansion of the stent, wherein each of said flexible links has a bend in it such that the length of said flexible link is greater than the distance between said first and second attachment points, whereby the flexible link can change shape to allow the distance between the attachment points to become longer or shorter to facilitate bending of the stent.

b. second meander patterns having axes extending in a second direction, different than said first direction, wherein said second meander patterns intersect with said first meander patterns;

c. wherein said first meander patterns have loops;

d. wherein said first meander patterns are spaced apart to leave a portion of said second meander patterns between each pair of adjacent first meander patterns;

e. wherein each of said second meander patterns has at least one loop between at least one pair of adjacent first meander patterns, and

f. wherein at least one of said loops is provided with a width that is smaller [**15] than the width of the meander pattern on which said [sic] at least one of said loops is disposed. n27

n27 '018 Patent, col. 13, lines 4-48; col. 18, lines 10-31.

d. The '982 Patent

On September 3, 2002, the Patent and Trademark Office ("PTO") issued the '982 Patent. Claims 1, 2-15, and 17 read as follows:

64. A stent formed of a tube having a patterned shape, the patterned shape comprising:

a. first meander patterns having axes extending in a first direction;

1. An expandable stent for supporting a vessel, wherein in the expanded and deployed state, the stent consists of:

(a) first meander patterns having loops, the first me-

ander patterns being longitudinally spaced from each other and having axes extending in a first direction; and

(b) second meander patterns having loops, the second meander patterns having axes extending in a second direction, different than the first direction,

(c) wherein the first and second meander patterns are interconnected to form a tubular structure;

(d) wherein the first meander patterns are connected to the second meander patterns so as to leave at least one loop of each of the second [**16] meander patterns in the space between each pair of adjacent first meander patterns; and

(e) wherein the second meander patterns are connected to the first meander patterns so as to leave no more than two loops of each of the first meander patterns between each pair of adjacent second meander patterns.

[*309] 2. The stent according to claim 1, wherein the shape and placement of the loops provides radial strength to the expanded stent to hold the vessel open.

3. The stent according to claim 2, wherein the first direction extends in a circumferential direction.

4. The stent according to claim 3, wherein the second direction extends in a longitudinal direction.

5. The stent according to claim 2, wherein the second direction extends in a longitudinal direction.

6. The stent according to claim 1, wherein the stent defines a plurality of enclosed spaces, with each longitudinal end of each of the enclosed spaces being formed by one or more loops of the first meander pattern.

7. The stent according to claim 6, wherein the enclosed spaces are substantially the same size.

8. The stent according to claim 7, wherein the first direction extends in a circumferential, [**17] direction.

9. The stent according to claim 8, wherein the second direction extends in a longitudinal direction.

10. The stent according to claim 7, wherein the second direction extends in a longitudinal direction.

11. The stent according to claim 6, wherein the first direction extends in a circumferential direction.

12. The stent according to claim 11, wherein the second direction extends in a longitudinal direction.

13. The stent according to claim 6, wherein the second direction extends in a longitudinal direction.

14. The stent according to claim 1, wherein the first direction extends in a circumferential direction.

15. The stent according to claim 14, wherein the second direction extends in a longitudinal direction.

17. The stent according to claim 1 wherein the second direction extends in a longitudinal direction. n28

n28 '982 Patent, col. 6, lines 29-67; col. 7, lines 1-11, 14-15.

e. The '381 Patent

In October 2002, the '381 Patent was issued. Claims 56-58, 61, [**18] 63, 65-66, and 68-70, asserted herein, recite:

56. A balloon expandable stent for implantation into a lumen to support the lumen, said stent both in the unexpanded state and in the balloon-expanded state including: a plurality of flexible cells adjacent to one another both circumferentially and longitudinally each of said flexible cells comprising:

a) a first flexible link including an arc, the first flexible link having a first longitudinal end and a second longitudinal end;

b) a second flexible link including an arc, the second flexible link having a first longitudinal end and a second longitudinal end;

c) a first circumferential member disposed between said first longitudinal end of said first flexible link and said first longitudinal end of said second flexible link and;

d) a second circumferential member disposed between said second longitudinal end of said first flexible link and said second longitudinal end of said second flexible link,

e) at least one of said first circumferential member and said second circumferential member in each of said cells having a portion with a substantial longitudinal component that is also a portion with a substantial [**19] longitudinal component of a first circumferential [*310] member or a second

circumferential member in a longitudinally adjacent cell,

wherein in the expanded state the first and second circumferential members have a substantial longitudinal component to provide coverage of the lumen.

57. A stent according to claim 56, wherein in the unexpanded state, a radial plane perpendicular to a longitudinal axis can pass through the flexible links of the flexible cells and not pass through the circumferential members.

58. A stent according to claim 56 wherein each of said first and second flexible links has ends generally aligned with respect to each other along a longitudinal axis of the stent.

61. A stent according to claim 56, wherein the first members of circumferentially adjacent cells are connected in a closed circumferential structure which contains at least five loops and the second members of circumferentially adjacent cells are connected in a closed circumferential structure which contains at least five loops.

63. A stent according to claim 56 wherein said plurality of flexible cells provide substantially all the support for said stent.

68. A stent according [**20] to claim 65, wherein the first members of circumferentially adjacent cells are connected in a closed circumferential structure which contains at least five loops and the second members of circumferentially adjacent cells are connected in a closed circumferential structure which contains at least five loops.

69. A stent according to claim 65 wherein each of said first and second flexible links has ends generally aligned with respect to each other along a longitudinal axis of the stent.

70. A stent according to claim 65 wherein said plurality of flexible cells provide substantially all the support for said stent.
n29

(a) Claim 13 of the '120 patent: literal infringement
n34

n29 '381 Patent, col. 9-10, lines 56-67, 1-18; col. 10, lines 19-22; col. 10, lines 23-25; col. 10, lines 26-27; col. 10, lines 30-35; col. 10, lines 38-40.

C. Cordis Litigation

In December 1999, Medinol and its licensee, Scimed Life Systems, Inc. ("Scimed") (collectively "plaintiffs"), filed a patent infringement action in the district of Delaware, alleging that Cordis Corp. [**21] ("Cordis"), Johnson & Johnson, and Johnson & Johnson Interventional Systems, Inc. had infringed certain claims of Medinol's '303, '120, and '018 patents. n30 Medinol argued that defendants' (1) BX Velocity stent, n31 (2) Crown and Mini-Crown stents, n32 and (3) Corinthian stent n33 infringed specified claims in its patents. After a [*311] two-week jury trial on the issues of infringement and invalidity, the jury returned the following verdict:

(1) BX Velocity Stent

(a) Claims 35, 47 and 60 of the '018 patent: no literal infringement; no infringement under the doctrine of equivalents; did not address the reverse doctrine of equivalents

(b) Claim 12 of the '303 patent: no infringement under the doctrine of equivalents.

(2) Crown and Mini-Crown Stents

(a) Claim 13 of the '120 patent: no literal infringement

(3) Corinthian Stent

The jury determined that all of the asserted claims were invalid for obviousness and failure to comply with the written description requirement, except for claim 13 of the '120 Patent. The jury found defendants' infringement of claim 13 through the [**22] sale and manufacture of the Corinthian stent to be nonwillful and awarded plaintiffs approximately eight million dollars in damages. n35

n30 In *Cordis*, Medinol asserted claims 12 of the '303 Patent; 13 of the '120 Patent; and 35, 47, and 60 of the '018 Patent.

n31 The BX Velocity stent is "composed of closed flexible cells, each of which has opposing horizontal loops connected by flexible N-shaped regions. When the BX Velocity stent is expanded, the 'N-regions' lengthen to compensate for the shortening of the stent." *Scimed Life Sys., Inc.*, 225 F. Supp. 2d at 430.

n32 The Crown and Mini-Crown stents are "composed of a series of serpentine-ring structures which are fused together." *Id.* at 431. The "Mini-Crown is based on the design of the Crown stent, but is scaled to treat coronary arteries with a smaller diameter." *Id.*

n33 The Corinthian stent "has a similar structure to the Crown stent, but is larger and is used in the biliary system and other peripheral arteries rather than in coronary vessels." *Id.* at 432.

n34 *Id.* at 432-33; Jury Verdict B0001.

[**23]

n35 See *Scimed Life Sys., Inc.*, 225 F. Supp. 2d at 433.

Medinol and Scimed then moved for judgment as a matter of law ("JMOL") and for a new trial under Rule 59(a). n36 Plaintiffs' motion was granted in part and denied in part. The court denied plaintiffs' motion as to infringement by the BX Velocity stent and the Crown and Mini-Crown stents. n37 The court also rejected plaintiffs' argument that the asserted claims of the '303 and '018 patents are not invalid for obviousness, finding that "defendants presented substantial evidence to support a reasonable jury's conclusion that claims 12, 35, 47 and 60 would have been obvious to one of ordinary skill

in the art in July 1994, the time the inventions described in those claims were made." n38 However, finding that defendants failed to present clear and convincing evidence such that a reasonable jury could conclude that the claims are invalid for failure to comply with the written description requirement, the court granted plaintiffs' motion for JMOL as to the "invalidity of claims 12, 35, 47, and 60 [of the '303 and '018 patents] [**24] based on failure to comply with the written description requirement." n39

n36 To prevail on a renewed motion for JMOL after a jury trial, the movant must demonstrate that the jury's findings, "presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusions implied [by] the jury's verdict cannot in law be supported by those findings." *Id.* (quoting *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1348 (Fed. Cir. 1998)).

The "decision to grant or deny a new trial is within the sound discretion of the trial court and, unlike the standard for determining [JMOL], the court need not view the evidence in the light most favorable to the verdict winner." *Id.* "The court should grant a new trial on the basis that the verdict was against the weight of the evidence only where a miscarriage of justice would result if the verdict were to stand." *Id.* at 434.

n37 With respect to infringement by the BX Velocity stent, the court found that, based on the record, "the jury could have found that the BX Velocity stent does not infringe claim 47 of the '018 patent because it does not contain the 'flexible compensating member or flexible link' limitation or the 'substantially uniformly flexible' limitation." *Id.* at 438. As for the Crown and Mini-Crown stents, the court concluded that "substantial evidence supports the jury's verdict that the Crown and Mini-Crown stents did not infringe claim 13 of the '120 patent." *Id.*

[**25]

n38 *Id.* at 440.

n39 *Id.* at 439.

Significantly, the court rejected plaintiffs' argument that they were entitled to a [*312] new trial based on an inconsistent jury verdict on obviousness. As the court explained:

Claim 13 of the '120 patent has an additional limitation, *i.e.*, that the stent must have "at least one of the loops of each of the first meanders disposed between each consecutive second meander to which the first meander is connected" over claim 60 of the '018 patent. This supports the jury's verdict that claim 13 is not invalid for obviousness whereas claim 60 is invalid.
n40

n40 *Id.* at 441 n.5.

Medinol and Scimed then unsuccessfully appealed the denial of their post-trial motions to the Federal Circuit, which held that "there was substantial evidence in the record to support the conclusion that the asserted claims of the '303 and '018 patents were obvious over the prior art at the time [**26] they were filed with the PTO." n41 Specifically, the Federal Circuit cited the testimony of Cordis's trial expert, Dr. Nigel Buller, as evidence of the existence of compensation for foreshortening in the prior art. Dr. Buller testified that stents constructed from combinations of rings and flexible connectors, "as required by the asserted claims of the '303 and '018 patents, were in the prior art." n42 In response to plaintiffs' argument that "even if each of the elements of the asserted claims was in the prior art, the record does not demonstrate that there was a motivation to combine" them, the Federal Circuit identified portions of the record that indicated that there was substantial evidence that "a person of ordinary skill in the art did, in fact, combine the elements of the stent design claimed by the '303 and '018 patents prior to July 28, 1994." n43 In particular, the court noted that Paul Burmeister, a Scimed engineer, had "evaluated the concept of a hybrid stent that would partially self-expand and then fully expand with a balloon." n44 He filed a patent application on May 19, 1994, containing the design aspects of the stents claimed in the '303 and '018 patents. Although [**27] he subsequently abandoned the design, the court found:

The jury had before it expert testimony that a person of ordinary skill in the art, on July 28, 1994, would inspect the drawings of the Burmeister application and conclude it disclosed a stent design that combined the claimed elements of the balloon expandable stent design taught by the patents-in-suit. This was legally suffi-

cient evidence from which the jury could have found a motivation to combine in the knowledge of one of ordinary skill in the art, a finding of fact we must presume the jury to have made given that it returned a verdict on the validity issue in favor of Cordis. n45

n41 *Scimed Life Sys., Inc.*, 87 Fed. Appx. at 735. As the Federal Circuit explained, the appellate court reviews a denial of a motion for JMOL by reapplying the district court's standard of review and the denial of a motion for a new trial for abuse of discretion. *See id.* at 733.

n42 *Id.*

n43 *Id.* at 735. The parties agreed that this was the operative date for purposes of invalidity because it is the "filing date of a priority document common to each of the [Cordis] patents-in-suit." *Id.* at 730. That is, each of the patents disputed in *Cordis* were filed as continuations of an earlier patent, dated July 28, 1994.

[**28]

n44 *Id.* at 735 (quotation marks and citation omitted).

n45 *Id.* at 736.

II. APPLICABLE LAW

A. Governing Law

[HN3] As a general principle, Federal Circuit precedent governs issues of patent [*313] law, while the law of the regional circuit applies to nonpatent matters. n46 [HN4] In the field of collateral estoppel, the Federal Circuit has explained that the "application of *Blonder-Tongue* n47 [is] an issue of patent law [and is therefore] . . . subject to [Federal Circuit law]." n48 However, application of general collateral estoppel principles, such as finality of judgment, is not within the exclusive jurisdiction of the Federal Circuit, and, as such, is governed by the law of the regional circuit. n49

n46 *See Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356, 1359 (Fed. Cir. 1999); *see also Dana v. E.S. Originals, Inc.*, 342 F.3d 1320, 1323 (Fed. Cir. 2003).

n47 *Blonder-Tongue Labs., Inc. v. University of Ill. Found.*, 402 U.S. 313, 28 L. Ed. 2d 788, 91 S. Ct. 1434 (1971).

[**29]

n48 *Pharmacia & Upjohn v. Mylan Pharmaceuticals*, 170 F.3d 1373, 1381 n.4 (Fed. Cir. 1999). [HN5] "In the patent infringement context, the legal standard for determining whether a patentee is collaterally estopped from asserting its alleged patent right was established by the Supreme Court in *Blonder-Tongue*." *Id.* at 1379. The Supreme Court ruled that "once the claims of a patent are held invalid in a suit involving one alleged infringer, an unrelated party who is sued for infringement of those claims may reap the benefit of the invalidity decision under principles of collateral estoppel." *Mendenhall v. Barber-Greene Co.*, 26 F.3d 1573, 1577 (Fed. Cir. 1994) (describing *Blonder-Tongue*).

n49 *See Pharmacia & Upjohn*, 170 F.3d at 1381 n.4.

B. Standard for Summary Judgment

[HN6] Summary judgment is appropriate if the evidence of record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." n50 "An issue of fact is genuine 'if the evidence is such that [*30] a jury could return a verdict for the nonmoving party.'" n51 A fact is material when "it 'might affect the outcome of the suit under the governing law.'" n52 [HN7] The movant has the burden of demonstrating that no genuine issue of material fact exists. n53 In turn, to defeat a motion for summary judgment, the non-moving party must raise a genuine issue of material fact. To do so, it "must do more than simply show that there is some metaphysical doubt as to the material facts," n54 and it "may not rely on conclusory allegations or unsubstantiated speculation." n55 In determining whether a genuine issue of material fact exists, the court must construe the evidence in the light most favorable to the non-moving party and draw all inferences in that party's favor. n56

n50 Fed. R. Civ. P. 56(c).

n51 *Gayle v. Gonyea*, 313 F.3d 677, 682 (2d Cir. 2002) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)).

n52 *Id.* (quoting *Anderson*, 477 U.S. at 248).

n53 See *Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 286 (2d Cir. 2002) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970)).

[**31]

n54 *Caldarola v. Calabrese*, 298 F.3d 156, 160 (2d Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986)).

n55 *Fujitsu Ltd. v. Federal Express Corp.*, 247 F.3d 423, 428 (2d Cir. 2002) (quoting *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998)); see also *Gayle*, 313 F.3d at 682.

n56 See *Niagara Mohawk Power Corp. v. Jones Chem. Inc.*, 315 F.3d 171, 175 (2d Cir. 2003).

C. Standard for Collateral Estoppel

1. General Principles

[HN8] Under the doctrine of collateral estoppel, or issue preclusion, a final [*314] judgment on the merits in a prior proceeding precludes relitigation of those issues that were actually litigated and determined in the first suit, "regardless of whether the two suits are based on the same cause of action." n57 "The purpose of the doctrine is to 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. [*32]'" n58

n57 *Postlewaite v. McGraw-Hill*, 333 F.3d 42, 48 (2d Cir. 2003); see also *Innovad Inc. v. Microsoft Corp.*, 260 F.3d 1326, 1334 (Fed. Cir. 2001).

n58 *Texas Instruments Inc. v. Cypress Semiconductor Corp.*, 90 F.3d 1558, 1568 (Fed. Cir. 1996) (quoting *Allen v. McCurry*, 449 U.S. 90, 94, 66 L. Ed. 2d 308, 101 S. Ct. 411 (1980)).

[HN9] To prevail on a motion for summary judgment premised on collateral estoppel, the movant must satisfy the following elements: (1) the issues presented in the instant action are identical to those involved in the prior action; (2) the issues were actually litigated and decided in the prior action; (3) the estopped party had a full and fair opportunity to litigate the issues in the prior action; and (4) resolution of the issues was necessary to the final judgment. n59 The movant bears the burden of

demonstrating that the identical issue was decided in the prior proceeding, while the party against whom the "collateral estoppel is asserted [*33] bears the burden of showing the absence of a fair and full opportunity to litigate." n60

n59 See *Central Hudson Gas & Elec. Corp. v. Empresa Naviera Santa S.A.*, 56 F.3d 359, 368 (2d Cir. 1995).

n60 *Russell-Newman, Inc. v. Robeworks, Inc.*, 2002 U.S. Dist. LEXIS 15323, No. 00 Civ. 9797, 2002 WL 1918325, at *3 (S.D.N.Y. Aug. 19, 2002).

2. Collateral Estoppel in the Context of Patent Invalidity and Infringement

[HN10] In the field of patent law, the Federal Circuit has counseled that collateral estoppel may apply to patent claims that were not previously adjudicated, because the "issues litigated, *not* the specific claims around which the issues were framed" are determinative. n61 The rationale for this principle was explained by the *Bourns* court. There, the Court of Claims noted first that "there is no reason to employ a different approach in a patent context by looking to the claims litigated instead of to the issues that were decided." n62 The court next observed that because claims in patents [*34] are routinely "repeated and duplicated, varying one from the other only in certain minor details," n63 it is unsurprising that each of these "differently worded claims may present identical issues." n64 "The realities of patent practice suggest that, merely because the invention, the patentee's contribution to the art, is presented in varying language or varying combinations of elements does not necessarily mean that the issues bearing on the nonobviousness of that concept or contribution vary from one claim to the next." n65 Accordingly, application of collateral estoppel in the context of patent validity is premised on the identity of those issues that were previously litigated. n66

n61 *Westwood Chem., Inc. v. United States*, 207 Ct. Cl. 791, 525 F.2d 1367, 1372 (Ct. Cl. 1975) (emphasis added); see also *Bourns v. United States*, 210 Ct. Cl. 642, 537 F.2d 486, 491 (Ct. Cl. 1976).

n62 *Bourns*, 537 F.2d at 491.

n63 *Id.*

n64 *Id.* at 492.

n65 *Id.*

n66 *See id.* [HN11] ("If a patentee has [] been heard on all the factual issues necessary to an obviousness determination, and that determination already has been made adversely to one claim, neither due process nor any provision of the patent statute . . . require that the patentee be heard once again on those same issues and on the same obviousness determination simply because a different claim is involved.").

[**35]

[*315] [HN12] "Where obviousness is the basis for the prior invalidity holding, an inquiry into the identity of the validity issue is [] properly phrased in terms of the factual inquiries mandated by *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966)" n67 As the *Westwood* court explained, the inquiry is:

whether the nonlitigated claims present new issues as to the art pertinent to the nonlitigated claims; as to the scope and content of that art; as to the differences between the prior art and the nonlitigated claims; and as to that level of ordinary skill in that art. If none of these inquiries raises any new triable issues, then the obviousness determination in the prior proceeding should be equally applicable to the nonlitigated claims. n68

The Court of Claims counseled that [HN13] a court applying this standard should first compare the adjudicated and unadjudicated claims. If the scope of these claims is identical, then there are no new issues relating to the obviousness determination raised as to the nonlitigated claims. n69 But, if this claim comparison reveals a substantive difference:

it will be necessary to go a step further [**36] and determine whether those differences are of a kind that would have been itemized in a *Graham* analysis as a difference between the claim and the prior art, or whether it was known in the prior art and is only a part of the claimed combination as a whole that provides the context in which the obviousness determination is made. If it is only of the latter character, *i.e.*, it is known in the prior art and does not alter the issue as to the dif-

ferences between the claimed subject matter and the prior art, it is still necessary to assess the importance of the difference to the combination as a whole since it is from that standpoint that the obviousness determination must be made. n70

[HN14] Although the "practicalities are to look to the distinguishing features incorporated into the claims and the validity determination necessarily focuses on those features," the "subject matter of the claim must be considered as a whole." n71 Indeed, *Bourns* teaches that where the nonmovant effectively argues that the additional elements distinguish the claimed combination as a whole from the prior art, it is not enough for a movant to show that those elements are disclosed in the prior art. [**37] n72 It is only [*316] where the claim comparison "indicates that the additional elements recited in the unadjudicated claims do not distinguish the *claimed combination as a whole* from the prior art," n73 that those newly asserted claims may not be litigated in a subsequent proceeding.

n67 *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1136 (Fed. Cir. 1985) (quoting *Westwood Chem.*, 525 F.2d at 1375).

n68 *Westwood Chem.*, 525 F.2d at 1375.

n69 *See id.* The U.S. Court of Claims is the predecessor court of the Federal Circuit, which has adopted as precedent the decisions of the Court of Claims and the Court of Customs and Patent Appeals. *See Interconnect Planning*, 774 F.2d at 1136 n.2.

n70 *Westwood Chem.*, 525 F.2d at 1375. Importantly, it is erroneous to compare a "successively narrower claim . . . with the one before it, [and] not with the prior art." *Interconnect Planning*, 774 F.2d at 1137 (quoting *Bourns*, 537 F.2d at 493).

n71 *Bourns*, 537 F.2d at 494.

[**38]

n72 Specifically, the *Bourns* court emphasized that "plaintiffs [did] not contest [that the features are of no importance to the combination as a whole], offering not one word that suggests that either of those features contributed in any way to any of the stated objects of the patent, or that they are in any way important to the combination set forth in the claims in which they ap-

pear." *Id.* at 493-94; *see also id.* at 494 [HN15] ("Where, as here, the distinguishing features of the adjudicated and unadjudicated claims appear to be the same, and neither the text of the patent nor the plaintiffs here attribute any importance or significance to the additional elements included in the unadjudicated claims, it is difficult to justify a further trial merely because of the presence of those elements in the claims.").

n73 *Id.* at 493 (emphasis added).

III. DISCUSSION

As an initial matter, Medinol argues that Guidant cannot prevail on its motion because of the *Cordis* jury's determination that claim 13 of the '120 Patent is "valid." n74 Medinol summarizes Guidant's arguments [**39] with respect to claim 13 of the '120 Patent as follows:

Guidant contends that the *Cordis* jury's factual findings, as inferred from the jury's verdicts of invalidity with respect to Claim 60 of the '018 patent and Claim 12 of the '303 patent establish that claim 13 of the '120 Patent is *invalid*. This cannot be. Either Guidant's arguments about the jury's factual findings are wrong, or the jury's verdicts are inconsistent. n75

Medinol submits that Guidant "itself argues that the factual findings it seeks to infer from the jury's verdicts as to claim 60 of the '018 Patent and claim 12 of the '303 Patent cannot be reconciled with the jury's verdict of validity with respect to claim 13 of the '120 Patent." n76 The implication is that the verdict is inconsistent, which, Medinol argues, means that it can have no preclusive effect. n77

n74 Medinol's Memorandum of Law in Opposition to Motion for Summary Judgment ("Pl. Opp.") at 2-3. Notably, the *only* claim common to the *Cordis* litigation and this action is claim 13 of the '120 Patent.

n75 *Id.* at 4.

n76 *Id.* at 5 (citing Def. Mem. at 1 n.1, 9 n.8, 16-18).

[**40]

n77 *See id.* (citing *United States v. Citron*, 853 F.2d 1055 (2d Cir. 1988), and *Harary v. Blumenthal*, 555 F.2d 1113 (2d Cir. 1977)). Support for Medinol's position is premised on courts' refusals to apply collateral estoppel due to inconsistent or compromise verdicts rendered in *criminal* cases. But, as Guidant notes, Medinol's reliance on these cases is misplaced, as [HN16] "the Supreme Court has specifically distinguished the applicable collateral estoppel principles in criminal and civil contexts." Guidant's Reply Memorandum of Law in Further Support of Its Motion for Summary Judgment ("Def. Reply") at 9 n.6 (citing *Standefer v. United States*, 447 U.S. 10, 22, 64 L. Ed. 2d 689, 100 S. Ct. 1999 (1980), where the Court "refused to apply collateral estoppel to a compromise acquittal, because, unlike in civil cases appellate review was not available").

Guidant counters that Medinol "had a full and fair opportunity to litigate the consistency of the *Cordis* verdict, and pursued that opportunity with vigor. Those efforts, however, failed to prove that the judgment [**41] is so suspect as to prevent application of collateral estoppel." n78 Claim 13 does not bar collateral estoppel because, according to Guidant, the *Cordis* jury did not find claim 13 "valid." Rather, it found that claim 13 was "not invalid" and infringed. n79

n78 Def. Reply at 1.

n79 *Id.* at 9. Interestingly, in *Cordis*, the trial court stated that "the jury found all of the asserted claims invalid for both obviousness and failure to comply with the written description requirement except for claim 13 of the '120 patent, which the jury determined is *valid*." *Scimed Life Sys. Inc.*, 225 F. Supp. 2d at 433 (emphasis added). However, the Federal Circuit described the verdict as finding claim 13 "not invalid and literally infringed." *Scimed Life Sys. Inc.*, 87 Fed. Appx. at 730. Thus, the record strongly suggests that the jury did not find claim 13 "valid," but "not invalid" due to defendants' failure to meet their evidentiary burden. *See* Jury Verdict B0006; *Stevenson v. Sears, Roebuck & Co.*, 713 F.2d 705, 710 (Fed. Cir. 1983) (noting that there is no such thing as a "validity" verdict).

[**42]

[*317] The *Cordis* jury's finding as to claim 13 does not prevent the application of collateral estoppel to *all* of the issues raised herein because there is insufficient

evidence suggesting that the verdict *is* inconsistent. Medinol already unsuccessfully attacked the jury verdict on this basis, arguing that:

both [claim 13 of the '120 Patent and claim 60 of the '018 Patent] describe the invention in terms of meander patterns and have nearly the same scope. Both require first and second intersecting meander patterns oriented in two different directions with loops, and both require at least one loop on the second meander pattern between two consecutive first meander patterns which it connects. n80

The district court rejected this argument, noting that the verdict was *not* inconsistent because claim 13 has the additional limitation of "at least one of the loops of each of the first meanders disposed between each consecutive second meander to which the first meander is connected." n81 The existence of this feature easily distinguishes claim 13 from invalid claim 60, undermining the argument that the jury rendered an inconsistent verdict.

n80 Plaintiffs' Opening Brief in Support of Their Renewed Motion for JMOL and Motion for a New Trial at B0429.

[**43]

n81 *Scimed Life Sys., Inc.*, 225 F. Supp. 2d at 441 n.5. Medinol and Scimed also unsuccessfully raised this argument on appeal.

Moreover, because the *Cordis* defendants failed to prove the invalidity of the combination containing this element, it would defy logic to preclude Medinol from asserting claims disclosing this limitation. n82 Thus, Medinol is not estopped from litigating the validity and alleged infringement of claims 27, 13, and dependent claims 16 and 18 of the '120 Patent, as well as claim 1 and dependent claims 2-15 and 17 of the '982 Patent.

n82 Additionally, Guidant requests that this Court determine as a matter of law that claim 13 is invalid for obviousness based on the findings in *Cordis*. *See id.* ("There is clear evidence of record that permits this Court to find claim 13 invalid as obvious as a matter of law without regard to collateral estoppel. . . . The legal question of

claim 13's invalidity can and should be resolved without further delay."). But this would require the Court to assess whether summary judgment *on the merits* of claim 13 is warranted, an inquiry exceeding the scope of the collateral estoppel motion. Indeed, Guidant's request seems antithetical to its motion. [HN17] The premise of collateral estoppel is that a party should be barred from relitigating issues already decided in a prior proceeding. However, the *Cordis* jury decided that claim 13 was not invalid and infringed. Thus, Guidant is essentially asking this Court to both declare claim 13 invalid, despite the jury's verdict to the contrary, and at the same time, to accord the *Cordis* decision preclusive effect. Logically, these arguments are inconsistent.

Moreover, the factual record of this case is insufficiently developed for the Court to reach such a conclusion. As Medinol points out, Guidant first asked for this relief in its reply brief and it would be "fundamentally unfair to Medinol [to] consider Guidant's request for summary judgment on the merits without giving Medinol an opportunity to submit evidence, including expert testimony, that demonstrates that the material facts pertinent to Guidant's obviousness defense are in dispute." 4/19/04 Letter to the Court from Keith R. Hummel, Medinol's Counsel ("4/19 Pl. Ltr.") at 2. Accordingly, Guidant's request that this Court find claim 13 invalid as a matter of law, without regard to collateral estoppel, is denied.

[**44]

As for those claims that do not contain this limitation (one of the loops of each of the first meanders disposed between each consecutive second meander), the primary questions raised by Guidant's motion are [*318] whether the issues presented here: (1) were actually litigated and decided in the prior action and (2) are substantially identical to those involved in the prior litigation. Medinol does not seriously contend that it lacked a full and fair opportunity to litigate the issues in the *Cordis* action or that the resolution of the issues of invalidity was unnecessary to the final judgment.

A. Were the Issues Raised Here Actually Litigated and Decided by the *Cordis* Jury?

[HN18] The usual practice when the defense of estoppel is raised is for the "court [to] first consider whether the issue of invalidity common to each action is substantially identical and whether in the earlier suit the patentee had had a full and fair opportunity to litigate the issue of invalidity." n83 However, because Medinol

challenges Guidant's motion for being "founded on a false premise: that all of the facts that Cordis alleged were 'necessarily determined by the jury,'" n84 for purposes of this motion, [**45] I will first evaluate whether the relevant issues were "actually decided" by the *Cordis* jury.

n83 *Carter-Wallace, Inc. v. United States*, 204 Ct. Cl. 341, 496 F.2d 535, 538 (Ct. Cl. 1974).

n84 Pl. Opp. at 1.

Medinol submits that where "a party seeks to apply collateral estoppel to facts underlying a jury verdict, it must show that an element of the jury's verdict 'would have necessitated a finding [of those facts].'" n85 In particular, Medinol asserts that the jury's verdict as to claim 13 demonstrates its failure to find all facts "relevant to obviousness in accordance with the arguments advanced by Cordis" because if it had determined that there was a general motivation to combine serpentine rings and flexible connectors, the jury would have found claim 13 invalid. n86 Thus, the jury either rendered an inconsistent verdict or it did not accept all of Cordis's arguments as to the prior art.

n85 *Id.* at 7 (quoting *Hemphill v. Schott*, 141 F.3d 412, 415 (2d Cir. 1998) (emphasis omitted)). *Hemphill* is clearly distinguishable, as it involved the application of collateral estoppel to issues previously determined in a *criminal* case. There, the court noted that it would "accept only those facts the jury necessarily determined in returning his conviction. . . . While a plaintiff may be estopped in a civil case from relitigating issues previously determined in a criminal case, such estoppel extends only to questions distinctly put in issue and directly determined in the criminal prosecution." *Id.* at 415 (quotation marks and citations omitted).

[**46]

n86 Pl. Opp. at 9.

Medinol also argues that "Guidant cannot point to any element of the jury's obviousness determinations that necessitated a finding that *all* the prior art cited by Cordis teaches what Cordis argued it taught and that there was a general motivation to combine *all* of that art." n87 Accordingly, Medinol submits the *Cordis* jury's

verdict could have been premised on only a small portion of that art.

n87 *Id.*

Medinol's argument lacks merit for at least two reasons. *First*, Guidant seeks collateral estoppel with respect to the *Cordis* jury's *finding of obviousness* regarding claims 12, 35, 47, and 60. It is undisputed that the jury found that every element of those claims is disclosed in the prior art and that motivation existed for a person of ordinary skill in the art to combine the limitations disclosed in these claims. n88 Because [**319] it is the finding of obviousness over the prior art [**47] that forms the basis of this collateral estoppel motion, the (non-patent) cases upon which Medinol relies, including *In re Bogdanovich* n89 and *Local 32B-32J, Service Employees International Union v. Port Authority* n90 are distinguishable. n91

n88 Def. Reply at 5. Guidant notes that "one need look no further than the jury verdict and the Federal Circuit's decision to reject Medinol's argument," because the verdict indicates that claims 12, 35, 47, and 60 were found obvious and the Federal Circuit "held that the jury necessarily and properly found that (1) each and every element of those claims is found in the prior art; and (2) that there is a motivation to combine these elements." *Id.* at 4.

n89 292 F.3d 104, 111-12 (2d Cir. 2002).

n90 3 F. Supp. 2d 413, 416 (S.D.N.Y. 1998).

n91 Medinol also cites *Hemphill*, 141 F.3d at 415. See Pl. Opp. at 7. But *Hemphill* is distinguishable, as discussed above. See *supra* note 85.

For example, in [**48] *Bogdanovich*, the appellants were seeking to reinstate a stay preventing the plaintiffs from enforcing a general verdict rendered by a California jury premised on either oppression, fraud, or malice. n92 In addressing the weight *California* law accords a general jury verdict, the *Bogdanovich* court discussed *Bender v. Tobman*. n93 The *Bender* court ruled that where the jury returned a verdict of liability on the basis of fraudulent inducement, but made no specific findings as to which statement was fraudulent, the jury had not actually decided that the debtor had committed fraud cognizable under section 523(a)(2)(A). n94

n92 292 F.3d at 109.

n93 107 B.R. 20 (S.D.N.Y. 1989).

n94 *Schneiderman v. Bogdanovich* (*In re Bogdanovich*), 292 F.3d 104, 111-12.

There is a clear difference between these bankruptcy cases and the instant action. The key issue in those cases was not whether the finding of fraudulent inducement should apply in the second proceeding, but whether any of the various underlying [**49] statements presented to the jury constituted fraud under the Bankruptcy Code. Conversely, the principal inquiry here is whether the finding of obviousness as to particular claims should be accorded preclusive effect.

Local 32B-32J is similarly distinguishable. In *Local 32B-32J*, this Court noted that "the verdict did not specify whether [the finding of liability based on a violation of First Amendment rights] was based upon the [Port Authority's] written rules, the unwritten practices, or both. . . . Because it cannot be determined what acts the jury found to be violative of the Constitution, different findings of fact are not precluded by collateral estoppel." n95 Thus, the operative issue was not the preclusive effect of the jury's verdict, but whether the court could make "different" findings of fact that, in the end, were "entirely consistent with those of the jury." n96 Moreover, as in *Bogdanovich*, the question before the court was different from the one presented here. The inquiry in *Local 32B-32J* centered on the preclusive effect of the various factual contentions presented to the jury, rather than the jury's finding of liability. Accordingly, neither [**50] *Bogdanovich* nor *Local 32B-32J* suggests that issue preclusion cannot apply to the *Cordis* jury's finding of obviousness.

n95 3 F. Supp. 2d at 416.

n96 *Id.* (emphasis added).

Second, [HN19] although in general "there is no 'different' law of collateral estoppel for patent cases," n97 patent cases undoubtedly raise unique concerns. The Supreme Court has described several economic considerations [**320] relating to the costly relitigation of patent validity issues. n98 If estoppel is denied because multiple prior art references support the jury's finding of invalidity for obviousness, the implication will be that a jury verdict could *only* be accorded preclusive effect if the verdict rests on a single prior art reference. But, as Guidant points out, "[this theory] would require a full-blown obviousness analysis of every claim element, forcing a wasteful relitigation of every facet of obviousness

regarding an invention that has already had its day in court." n99 The test articulated by [**51] *Westwood*, *Bourns*, and *Interconnect Planning* does not require this, and there is no basis for imposing it upon Guidant.

n97 4/19 Pl. Ltr. at 3. Although the law of the regional circuit does apply to general collateral estoppel principles, the Federal Circuit law governs the application of *Blonder-Tongue*. See *supra* notes 47-48 and accompanying text.

n98 See *Blonder-Tongue*, 402 U.S. at 335-48.

n99 Def. Reply at 2-3. I note, however, that this motion seriously implicates the concerns expressed by the *Westwood* court, namely that:

[HN20] in all but the simplest case of a subsequent suit involving identical claims, any potential savings in time, both for the parties and the court, can be easily consumed, as in this case, by the motions, hearings, and briefs needed to evaluate and compare the issues raised by the claims. Naturally, if the estoppel is ultimately determined to be inapplicable to the unlitigated claims, the parties must proceed to trial and the total experience is a proceeding far lengthier than even the normally protracted patent case. This is not to say that in a case such as this, with multiple patents having both adjudicated and nonadjudicated claims, that an inquiry into the applicability of collateral estoppel, including a limited hearing for ascertaining the facts and avoiding duplicitous litigation, should not be held. There is a danger, however, where nonlitigated claims in a relatively complex technology are involved, that inquiry into the estoppel may just as easily perpetuate protracted litigation as eliminate it and it may well be as convenient to address the issues of validity on their merits.

[**52]

B. Are the Issues Presented Here Substantially Identical to Those Previously Litigated? (Application of the *Graham* Factors)

1. Scope and Content of Prior Art

Guidant relies on the prior art references employed in the *Cordis* litigation, contending that the "scope and content of the prior art is exactly the same." n100 Medinol does not dispute that the Lau '955, Palmaz '417, Wolff '404, and Fischell '370 patents are prior art to the asserted claims of the patents-in-suit. n101 Instead, Medinol argues that using the *Cordis* prior art presumes that the jury relied on *all* the prior art references and made particular findings as to the "teachings" of those references. n102 Specifically, [*321] Guidant has not demonstrated that the jury "necessarily decided" that there was a motivation to combine [any of these patents] with any other reference, because the jury could have reached its obviousness verdicts using a combination that *did not* include each of these references." n103 However, as discussed in the preceding section, this argument lacks merit. Accordingly, the Pinchasik '373, Lau '955, Palmaz '417, Wolff '404, and Fischell '370 references are considered [*53] to be prior art for purposes of this motion.

n100 Def. Reply at 10.

n101 See Pl. 56.1 Stmt. PP20 (Lau '955 Patent), 16 (Palmaz '417 Patent), 22 (Wolff '404 Patent), 23 (Fischell '370 Patent).

n102 Pl. Opp. at 7; *see also id.* at 12 (rejecting Guidant's Claim Comparison, Ex. 5 to Lehman Decl.). Medinol's arguments relating to Guidant's burden to demonstrate those facts that were actually decided by the jury are addressed in Part III.A.

Medinol contends that the Pinchasik '373 Patent is not prior art as to the asserted claims of the patents-in-suit, which are continuations or continuations-in-part of the application that led to the Pinchasik '373 Patent. But, in its brief submitted to the Federal Circuit for purposes of the

Cordis appeal, Medinol clearly stated that "the '373 patent is prior art to the patents-in-suit under § 102(e)." Brief of Plaintiff-Appellant Medinol Ltd. at B0761. Although Medinol now asserts that this statement is irrelevant for purposes of this instant motion as it was made "with respect to the *claims* that were being argued with respect to the Federal Circuit," Transcript of April 14, 2004 Oral Argument ("Tr.") at 19 (Hummel statement), the language of the statement belies this interpretation. The Pinchasik '373 Patent is prior art to all of the *Cordis* patents-in-suit, and accordingly to all of the patents disputed herein, except for the '982 and '381 patents.

[**54]

n103 Pl. Opp. at 16; *see also id.* at 13 (making similar argument regarding the Lau '955 Patent).

2. Level of Ordinary Skill in the Art

For purposes of this motion, the definition of one of "ordinary skill in the art" is borrowed from the *Cordis* proceedings. Thus, one of ordinary skill in the art is assumed to be "an engineer working with a physician" or a "stent design team," who are presumed to know all of the relevant prior art. n104 Neither party argues, nor is there any basis for concluding, that the inquiry into the differences between the level of ordinary skill in the art raises any new triable issues.

n104 Def. Mem. at 13.

3. Claim Comparison

As the claims asserted in this action are not of "identical scope" as those litigated in *Cordis*, the differences between the claims in light of the prior art must be evaluated to determine whether the newly asserted claims are nevertheless substantially [*55] identical to the invalid claims. Guidant suggests comparison of the following claims: n105

GUIDANT'S CLAIM COMPARISON

NEWLY ASSERTED CLAIM ("CL.")
Cl. 24 of '303 Patent

Cl. 28 of '303 Patent

ADJUDICATED [INVALID] CL.
Cl. 47 of '018 Patent

Cl. 47 of '018 Patent

GUIDANT'S CLAIM COMPARISON

NEWLY ASSERTED CLAIM ("CL.")	ADJUDICATED [INVALID] CL.
Cl. 51 of '018 Patent	Cl. 47 of '018 Patent
Cl. 64 of '018 Patent	Cl. 60 of '018 Patent
Cl. 28 of '120 Patent (depends on Cl. 21)	Cl. 60 of '018 Patent
Cl. 56 of '381 Patent	Cl. 12 of '303 Patent (depends on Cl. 6)
Cls. 57, 58, 61, 63 of '381 Patent (depend on Cl. 56)	Cl. 12 of '303 Patent (depends on Cl. 6)
Cl. 65 of '381 Patent	Cl. 12 of '303 Patent (depends on Cl. 6)
Cls. 66, 68-70 of '381 Patent (depend on Cl. 65)	Cl. 12 of '303 Patent (depends on Cl. 6)

n105 See Guidant's Claim Comparison.

cated in *Cordis*, but whether it lends patentable significance to the claimed combination, thereby altering the issues bearing on the obviousness determination. n110

a. Collaterally Estopped Claims

The feature differentiating claims 24 of the '303 Patent and 64 of the '018 Patent from invalid claims 47 and 60 of the '018 Patent, respectively, is a width-related [**56] limitation (*i.e.*, making a piece of metal narrower) intended to increase stent flexibility. However, as set forth in detail below, Guidant demonstrates that including this element in claims 24 and 64 does not distinguish the claimed combinations as a whole from the prior art. Specifically, Guidant establishes that the prior art discloses a motivation to combine the width limitation with other stent elements to achieve greater flexibility. Accordingly, claim 24 is substantially identical to invalid [**22] claim 47 and claim 64 is substantially identical to invalid claim 60 and collateral estoppel bars the assertion of these claims.

i. Claim 24 of the '303 Patent

The only difference between claims 24 and 47 n106 is the width limitation disclosed in claim 24: n107 "a portion of said flexible member [connector] having a width smaller than the width of said apices to which said first end and second end are connected." n108 Medinol contends that it is not precluded from litigating claim 24 because none of the claims found invalid in *Cordis* contained a "limitation regarding the width of the members of the claimed device, and width was not an allegedly distinguishing feature of [**57] the accused device." n109 But the question is not whether width was adjudi-

n106 Claim 47, which "emphasizes the flexibility of the stent," Brief of Plaintiff-Appellant Medinol Ltd. at B0756, discloses:

A generally longitudinally extending tubular stent which is substantially uniformly flexible with respect to its longitudinal axis by the flexibility of its cells with respect to said axis including:

- (a) a plurality of cells flexible around said longitudinal axis connected to one another about the circumference of said stent to form a band of flexible cells, each of said flexible cells having apices disposed apart and generally opposite to one another,

(b) each of said flexible cells having a plurality of flexible links disposed apart and generally opposite to one another,

(c) each of said flexible links including a plurality of portions with neighboring portions having an area of inflection therebetween, and

(d) said flexible cells in said adjacent bands of flexible cells connected to one another.

[**58]

n107 *See, e.g.*, Guidant's Claim Comparison at 1; Pl. Opp. at 20.

n108 Def. Mem. at 13.

n109 Pl. Opp. at 20.

n110 *See Bourns*, 537 F.2d at 490. As Guidant points out, one of the new features discussed in *Bourns* -- hollow rivets -- was not mentioned in the lower court's decision. *See* 4/27/04 Letter to the Court from Guidant's counsel at 3. In that case, the operative question was whether "the newly claimed combination was nonobvious simply because of the addition of hollow rivets," which the *Bourns* court answered in the negative. *Id.* Accordingly, the court found that the addition of hollow rivets did not distinguish the combination as a whole from the prior art, and as such that the patentee could not relitigate the obviousness of the invention as a whole. *See Bourns*, 537 F.2d at 494.

Guidant demonstrates that the width limitation does not present a triable issue because it is contained in the prior art -- specifically in the drawings and text of the Palmaz '417 and Wolff '404 patents. For instance, Figure 9 of the Palmaz '417 [**59] and Figure 5 of the Wolff '404 Patent depict connectors that are narrower than the

surrounding stent segments. Additionally, the Palmaz '417 Patent states that "it should be readily apparent to one of ordinary skill in the art, that the thickness of connector members 100 could alternatively be smaller than that of elongate members 75." n111

n111 Palmaz '417 Patent, col. 11, line 68-col. 12, line 3; *see also* Pl. 56.1 Stmt. P38.

Even though this additional limitation is clearly disclosed in the prior art, Medinol contends that "new limitation [is] significant to the goals of the patent[] and provide[s] advantages over the prior art," n112 namely that it makes the stent more flexible, [*323] and as such, the claimed combination as a whole is distinguishable from the prior art. n113 This argument fails, however, because Guidant has clearly demonstrated that the prior art discloses a motivation to combine this element into the stent to achieve the objective cited by Medinol -- greater flexibility. For instance, [**60] the Wolff '404 Patent recites a motivation to combine this limitation with other prior art references to enhance flexibility, stating that the wire is "usually ground to a smaller diameter in the spaces between the stents to provide additional flexibility for the hinge function." n114 Thus, the additional element -- relating to width -- does not distinguish the claimed combination from the prior art and as such, does not present a triable issue. Accordingly, Medinol is collaterally estopped from asserting this claim.

n112 4/19 Pl. Ltr. at 5.

n113 *See id.*; Tr. at 60.

n114 Wolff '404 Patent, col. 2, lines 54-57.

ii. Claim 64 of the '018 Patent

As for claim 64, Guidant compares it to claim 60 of the '018 Patent. n115 Comparison of these claims reveals one difference -- claim 64 contains a width-related limitation. But, as noted above, this element does not distinguish the claimed combination as a whole from the prior art. Thus, collateral estoppel bars claim 64.

n115 Claim 60 provides:

A stent having a longitudinal axis formed of a tube having a patterned shape, the patterned shape comprising:

a. first meander patterns having axes extending in a first direction;

b. second meander patterns having axes extending in a second direction, different than said first direction, wherein said second meander patterns intersect with said first meander patterns;

c. wherein said first meander patterns have loops;

d. wherein said first meander patterns are spaced apart to leave a portion of said second meander patterns between each pair of adjacent first meander patterns;

e. wherein each of said second meander patterns has at least one loop between at least one pair of adjacent first meander patterns, and

f. wherein said loops disposed on said first meander patterns and said loops disposed on said second meander patterns are disposed and adapted to cooperate so that upon the expansion of said stent said loops change shape to

compensate for the tendency of said stent to foreshorten when said stent is expanded.

[**61]

b. Claims That Are Not Barred by Collateral Estoppel n116

n116 In addition to the claims discussed in this section, as discussed in the preceding section, claims 13, 16, 18, and 27 of the '120 Patent and claims 1, 2-15, and 17 of the '982 Patent are also not collaterally estopped. *See supra* Part III.

The remaining claims -- 28 of the '303 Patent; 51 of the '018 Patent; 28 of the '120 Patent; and 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent are not barred by collateral estoppel. I reach this conclusion for the following reason: Guidant has not yet established that the additional features contained in these claims do not impart patentable significance to the combinations as a whole. As such, Guidant has not demonstrated that these claims are "substantially identical" to the claims litigated in *Cordis*. n117

n117 Of course, Guidant's failure to demonstrate that these newly asserted claims are substantially identical to the previously litigated claims only prevents it from prevailing on *collateral estoppel* grounds. Guidant may ultimately establish that these claims are invalid for obviousness.

[**62]

i. Claim 28 of the '303 Patent

Guidant compares claim 28 with invalid [*324] claim 47. n118 Medinol argues that there is a significant difference between the claims -- namely that claim 28 "require[s] that the stent or a part thereof be composed of longitudinally adjacent bands of one type of cell." n119 That is, while claim 28 describes "connected cells having a longitudinal axis defining a substantially uniform structure of flexible cells having a longitudinal axis and a circumferential axis," claim 47 does not mention uniformity, disclosing only a stent that includes "a plurality of [flexible] cells." n120 Guidant has established that this feature is contained in the prior art. Specifically, Figure 5

of the Lau '955 Patent describes enclosed spaces of substantially the same size. n121

n118 See Def. Mem. at 14. Guidant asserts that claim 28 "specifies that the flexible links are disposed apart and generally opposite to one another *about the circumferential extension of the cell*, whereas claim 47 only requires that flexible links be disposed apart and generally opposite to one another." *Id.*

[**63]

n119 Pl. Opp. at 22.

n120 '303 Patent, col. 10, lines 16-19; '018 Patent, col. 12, line 28.

n121 See Def. Reply at 8; Pl. 56.1 Stmt. P113.

Despite this, Medinol argues that the combination of this limitation ("longitudinal adjacent bands of one type of cell") with the other elements of the claim "increase substantially the flexibility of [the] stent" n122 in a manner that is not present in the prior art. Guidant has not yet sufficiently shown that this combination as a whole was known in the prior art or that the prior art discloses a clear motivation to combine these elements in this manner. n123 Therefore, Guidant has not demonstrated that the addition of uniformity does not lend patentable significance to the claimed combination. Because claim 28 is not substantially identical to invalid claim 47, the claim is not barred by collateral estoppel.

n122 Tr. at 60 (Hummel statement).

n123 It bears noting again, *see supra* note 117 (same); that although Guidant has not adequately demonstrated that this claim is substantially identical to invalid claim 47, Guidant may ultimately establish that claim 28 is invalid for obviousness. That is, nothing in this decision forecloses Guidant from successfully moving for summary judgment *on the merits*, at a later stage in the proceedings. This reasoning applies with equal force to all of the claims discussed herein, which are not barred by collateral estoppel.

[**64]

ii. Claim 51 of the '018 Patent

Guidant next compares claim 51 of the '018 Patent with invalid claim 47 of the '018 Patent, revealing that claim 51 contains two "new" limitations. *First*, claim 51 contains the following language: "whereby the flexible link can change shape to allow the distance between the attachment points [of the flexible link] to become longer or shorter to facilitate bending of the stent." n124 But, as Guidant notes, this concept is disclosed in invalid claim 12 of the '303 Patent and is therefore obvious. *Second*, claim 51 states: "(c) wherein each of said flexible links comprises a first attachment point and a second attachment point, the first and second attachment points being on a line segment that extends substantially parallel to said longitudinal axis prior to expansion of the stent." n125 Again, Guidant argues that this is not "new" because the Delaware court "construed the flexible link limitation of claim 47 to include the requirement that these elements be longitudinally or horizontally aligned." n126

n124 Def. Mem. at 15.

n125 *Id.*

n126 *Id.* (citing B0933). In the *Cordis* proceedings, Medinol objected to this claim construction, but the court rejected Medinol's arguments.

[**65]

[*325] Medinol does not dispute Guidant's interpretation, but asserts that claim 51, like claim 28 of the '303 Patent, requires that the stent "consist[] essentially of" the described cells. n127 In other words, claim 51 requires adjacent bands of one type of cell, which, as discussed in the preceding section is disclosed in the prior art. However, as with claim 28, Medinol argues that the combination of this feature with the other elements of the claim increase stent flexibility in a novel manner. n128 Guidant has not adequately shown that the claimed combination is disclosed in the prior art or that the addition of this limitation is insignificant to the overall combination. Accordingly, claim 51 is not substantially identical to invalid claim 47 and collateral estoppel does not apply.

n127 Pl. Opp. at 22 (quoting '018 Patent, col. 13, line 6).

n128 Tr. at 60 (Hummel statement).

iii. Claim 28 of the '120 Patent

Claim 28 depends on claim 21 of the '120 Patent, and differs from invalid claim 60 in one [**66] way -- the requirement that the first and second meander patterns share common members. Guidant argues that this limitation is disclosed in the Lau '955 Patent, "because the rings are serpentine and there are loops of the rings between adjacent connectors." n129 Medinol counters that "Guidant has made no showing that there was a motivation to combine [the Lau '955 Patent] with any of the claims held invalid or with any other reference." n130 Guidant has not sufficiently demonstrated that this combination as a whole is contained in the prior art or that this additional element does not lend patentable significance to the invention. Accordingly, claim 28 is not substantially identical to invalid claim 60, and Medinol is not precluded from asserting claim 28 in this action.

n129 Def. Mem. at 17.

n130 Pl. Opp. at 24.

iv. Claims 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent

The remaining claims are comparable to invalid claim 12 of the '303 Patent, which is dependent on claim 6 of the same patent. [**67] n131 Guidant first argues that claim 56 and its [*326] invalid counterpart -- claim 12 -- are substantially identical in that they both describe a stent including a plurality of flexible connected cells. The elements of these cells are described using slightly different terminology -- *i.e.*, claim 56 provides for a "first circumferential member disposed between said first longitudinal end of said first flexible link and said first longitudinal end of said second flexible link" n132 whereas invalid claim 12 provides for "a first member having a longitudinal component having a first end and a second end; a second member having a longitudinal component having a first end and a second end . . . [and] a first loop defining a first angle disposed between said first end of said first member and said first end of said second member." n133 Even though the words differ, they describe essentially the same structure, which is disposed between two flexible links and consists of a loop between members.

n131 These claims provide:

12. The stent of claim 6, wherein said cells define a uniform cellular structure.

6. An expandable stent defining a longitudinal aperture, including: a plurality of flexible connected cells, each of said flexible cells comprising:

a) a first member having a longitudinal component having a first end and a second end;

b) a second member having a longitudinal component having a first end and a second end,

c) a third member having a longitudinal component having a first end and a second end;

d) a fourth member having a longitudinal component having a first end and a second end;

e) a first loop defining a first angle disposed between said first end of said first member and said first end of said second member;

f) a second loop defining a second angle disposed between said second end of said third member and said second end of said fourth member, and disposed generally opposite to said first loop;

g) a first flexible compensating member or flexible

link having a first end and a second end disposed between said first member and said third member, said first end of said first flexible compensating member or flexible link communicating with said second end of said first member and said second end of said first flexible compensating member or flexible link communicating with said first end of said third member, said first and said second ends disposed a variable longitudinal distance from each other;

h) a second flexible compensating member or flexible link having a first end and a second end disposed between said second member and said fourth member, said first end of said second flexible compensating member or flexible link communicating with said second end of said second member and said second end of said second flexible compensating member or flexible link communicating with said first end of said fourth member, said first and said second ends disposed a

variable longitudinal distance from each other, said first and said second flexible compensating member or flexible links differentially extendable or compressible when said stent is bent in a curved direction away from the longitudinal axis of said aperture; and

i) said first, said second, said third, and said fourth members and said first and said second loops, and said first and said second flexible compensating member or flexible links disposed so that as said stent is expanded the distance between said first and said second flexible compensating member or flexible links increases and the longitudinal component of said first, second, third and fourth members decreases while said first and said second loops remain generally opposite to one another, the ends of said first and said second flexible compensating member or flexible links open so as to increase said variable longitudinal distance between said first and said second ends of said first flexible

compensating member or flexible link and so as to increase said variable longitudinal distance between said first and said second ends of said second flexible compensating member or flexible link so as to compensate for the decreasing of the longitudinal component of said first, second, third, and fourth members and substantially lessen the fore-shortening of said stent upon its expansion.

[**68]

n132 '381 Patent, col. 10, lines 1-4.

n133 '303 Patent, col. 7, lines 5-8, 13-15.

But claim 56 also contains a new limitation, section (e), as compared with invalid claim 12, which discloses a limitation requiring circumferential members:

having a portion with a substantial longitudinal component that is also a portion with a substantial longitudinal component of a first circumferential member or a second circumferential member in a longitudinally adjacent cell, wherein in the expanded state the first and second circumferential members have a substantial longitudinal component to provide coverage of the lumen. n134

Guidant claims that this difference is obvious because it is present in the prior art. In particular, Guidant points out that this feature is revealed in Figure 3 of the Lau '955 Patent, which is "specifically described as being in the expanded state" and depicts "circumferential members (the rings) [with] a longitudinal component that is

shared with adjacent cells." n135 The Lau '955 Patent also describes coverage of the lumen, stating that the "closely spaced [**69] cylindrical sections 12 provide uniform [*327] support for the wall of the artery 15." n136

n134 '381 Patent, col. 10, lines 11-18.

n135 Def. Mem. at 21; Pl. 56.1 Stmt. P75.

n136 Lau '955 Patent, col. 5, lines 22-23.

Even though this new limitation is present in the prior art, Medinol again contends that the combination of this feature with the other elements of the claim "help[] make the stent more uniformly flexible along the longitudinal axis" n137 in a way that distinguishes the combination as a whole from the prior art. Guidant, in turn, has not yet shown that this additional limitation is of no importance to the combination as a whole and accordingly this feature does not lend patentable significance to the claim. As such, claim 56 is not substantially identical to invalid claim 12, precluding the application of collateral estoppel. Because claims 57, 58, 61, and 63 depend on claim 56, they similarly survive this motion.

n137 Tr. at 60 (Hummel statement).

[**70]

Claim 65 describes a structure similar in many ways to that revealed by claim 56 and comparable to invalid claim 12. A new limitation is presented by claim 65 by the language "wherein said plurality of connected flexible cells imparts radial strength to said stent and coverage of the surface of said lumen in an amount sufficient to support said lumen when said stent is expanded by a balloon from a delivery diameter to a deployment diameter." This difference, however, is disclosed by the Lau '955 patent, which describes the expansion of the stent in the artery through the inflation of a balloon, thereby causing the cylindrical elements of the stent to be pressed into the wall of the artery providing "uniform support for the wall of the artery." n138 As with claim 56, Medinol asserts that this limitation, combined with the other features of this claim, serve to make the stent more uniformly flexible along the longitudinal axis, thus distinguishing the combination as a whole from the prior art. Again, Guidant makes no adequate contrary showing and as such, Medinol is not precluded from asserting this claim, along with all claims dependent on it, *i.e.*, claims 66 and 68-70.

n138 Lau '955 Patent, col. 5, lines 23-24; *see also id.* col. 4, line 53-col. 5, line 6.

[**71]

IV. CONCLUSION

For the foregoing reasons, Guidant's motion for summary judgment on the basis of collateral estoppel is granted as to the following claims: 24 of the '303 Patent and 64 of the '018 Patent. Guidant's motion is denied as to the following claims: 28 of the '303 Patent; 13, 16, 18, and 27, and 28 of the '120 Patent; 51 of the '018 Patent;

1, 2-15, and 17 of the '982 Patent; and 56-58, 61, 63, 65-66, and 68-70 of the '381 Patent. The Clerk of the Court is directed to close this motion [# 25 on the docket sheet]. A conference is scheduled for June 14, 2004, at 4:30 p.m. in Courtroom 15C.

SO ORDERED:

Shira A. Scheindlin

U.S.D.J.

Dated: New York, New York

June 4, 2004

Time of Request: August 24, 2005 09:07 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

4 of 10 DOCUMENTS

**SCIMED LIFE SYSTEMS, INC., BOSTON SCIENTIFIC SCIMED, INC.,
BOSTON SCIENTIFIC CORPORATION and MEDINOL, LTD., Plaintiffs, v.
JOHNSON & JOHNSON, CORDIS CORPORATION and JOHNSON &
JOHNSON INTERVENTIONAL SYSTEMS, INC., Defendants.**

Civil Action No. 99-904-SLR (consolidated)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

225 F. Supp. 2d 422; 2002 U.S. Dist. LEXIS 18734

September 27, 2002, Decided

SUBSEQUENT HISTORY: Affirmed by Scimed Life Sys. v. Johnson & Johnson, 2004 U.S. App. LEXIS 510 (Fed. Cir., Jan. 14, 2004)

PRIOR HISTORY: Scimed Life Sys. v. Johnson & Johnson, 2001 U.S. Dist. LEXIS 12862 (D. Del., Aug. 15, 2001)

DISPOSITION: **[**1]** Plaintiffs' motion for judgment as a matter of law granted in part and denied in part. Plaintiffs' motion for a new trial denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff patent holder moved for judgment as a matter of law and for a new trial following a two-week jury trial of its action against defendants, alleged infringers. The jury found all of the patents, which concerned expandable stents, except one claim to be invalid, and that the breach as to the one claim was not willful.

OVERVIEW: The balloon expandable stents were used to improve the success of balloon angioplasty by minimizing the occurrence of restenosis. The jury awarded plaintiffs \$ 7,021,728 based on a nine percent royalty rate for defendants' sale of one infringing stent in the United States, and \$ 1,279,556 based on a seven percent royalty rate for foreign sales, based on a non-willful infringement. The court found that most of the jury's findings were supported by substantial evidence. The patent holder challenged the finding of non-infringement as to

four claims. The court rejected any change to its limitation of claims at trial, but agreed with the patent holder that the jury erred in finding a failure to comply with the written description requirement as to the four claims. However, it found that substantial evidence supported the jury's conclusion that the claims would have been obvious to one of ordinary skill in the art at the time the inventions described in the claims were made. Two patents were invalid for obviousness over the prior art, and substantial evidence supported findings of non-infringement.

OUTCOME: The motion for judgment as a matter of law was granted in part to reverse the jury's finding as to the invalidity of four claims based on failure to comply with the written description requirement. The motion for a new trial was denied.

LexisNexis(R) Headnotes

Civil Procedure > Trials > Judgment as Matter of Law
[HN1] To prevail on a renewed motion for judgment as a matter of law following a jury trial, the moving party must show that the jury's findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusions implied by the jury's verdict cannot in law be supported by those findings. Substantial evidence is such relevant evidence from the record taken as a whole as might be acceptable by a reasonable mind as adequate to support the finding under review.

Civil Procedure > Appeals > Standards of Review > Substantial Evidence Rule

[HN2] In assessing the sufficiency of the evidence, a court must give the non-moving party, as the verdict winner, the benefit of all logical inferences that could be drawn from the evidence presented, resolve all conflicts in the evidence in his favor, and in general, view the record in the light most favorable to him. The court may not determine the credibility of the witnesses nor substitute its choice for that of the jury between conflicting elements of the evidence. In sum, the court must determine whether the evidence reasonably supports the jury's verdict.

Civil Procedure > Relief From Judgment > Motions for New Trial

[HN3] See Fed. R. Civ. P. 59(a).

Civil Procedure > Relief From Judgment > Motions for New Trial

[HN4] The decision to grant or deny a new trial is within the sound discretion of a trial court and, unlike the standard for determining judgment as a matter of law, the court need not view the evidence in the light most favorable to the verdict winner.

Civil Procedure > Relief From Judgment > Motions for New Trial

[HN5] On a motion for new trial, a court may consider the credibility of witnesses and the weight of the evidence. Among the most common reasons for granting a new trial are: (1) the jury's verdict is against the clear weight of the evidence, and a new trial must be granted to prevent a miscarriage of justice; (2) newly-discovered evidence exists that would likely alter the outcome of the trial; (3) improper conduct by an attorney or the court unfairly influenced the verdict; or (4) the jury's verdict was facially inconsistent. A court must proceed cautiously, mindful that it should not simply substitute its own judgment of the facts and the credibility of the witnesses for those of the jury. Rather, the court should grant a new trial on the basis that the verdict was against the weight of the evidence only where a miscarriage of justice would result if the verdict were to stand.

Patent Law > Infringement Actions > Infringing Acts > General Overview

Patent Law > Infringement Actions > Doctrine of Equivalents > Fact & Law Issues

[HN6] A determination of infringement requires a two-step analysis. First, the court must construe the asserted claims so as to ascertain their meaning and scope. Second, the claims as construed are compared to the accused product. Claim construction is a question of law while infringement is a question of fact. To establish literal

infringement, every limitation set forth in a claim must be found in an accused product, exactly. An accused product that does not literally infringe a claim may still infringe under the doctrine of equivalents if each limitation of the claim is met in the accused product either literally or equivalently. An element in an accused product is equivalent to a claim limitation if the differences between the two are insubstantial to one of ordinary skill in the art. A fact finder may also determine equivalence by assessing whether an element does substantially the same thing in substantially the same way to get substantially the same result as a claim limitation.

Patent Law > Infringement Actions > Doctrine of Equivalents > Fact & Law Issues

Patent Law > Infringement Actions > Infringing Acts > General Overview

[HN7] The issue of literal infringement may be resolved with the step of claim construction, for upon correct claim construction, it may be apparent whether the accused device is within the claims. Similarly, the determination of infringement under the doctrine of equivalents may be limited as a matter of law.

Patent Law > Infringement Actions > Prosecution History Estoppel > General Overview

[HN8] Prosecution history estoppel can prevent a patentee from relying on the doctrine of equivalents when the patentee relinquishes subject matter during the prosecution of the patent, either by amendment or argument.

Patent Law > Infringement Actions > Prosecution History Estoppel > General Overview

[HN9] There is a clear distinction between following the statements in the prosecution history in defining a claim term, and the doctrine of prosecution history estoppel, which limits expansion of the protection under the doctrine of equivalents when a claim has been distinguished over relevant prior art. Claim interpretation in view of the prosecution history is a preliminary step in determining literal infringement, while prosecution history estoppel applies as a limitation on the range of equivalents if, after the claims have been properly interpreted, no literal infringement has been found. The limit on the range of equivalents that may be accorded a claim due to prosecution history estoppel is simply irrelevant to the interpretation of those claims.

Patent Law > Claims & Specifications > Definiteness > General Overview

Patent Law > Claims & Specifications > Description Requirement > General Overview

[HN10] See 35 U.S.C.S. § 112, para. 1.

Patent Law > Infringement Actions > Defenses > Patent Invalidity > Validity Presumption

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

[HN11] Patent claims are presumed valid. 35 U.S.C.S. § 282. The presumption of validity under § 282 carries with it a presumption the examiner did his duty and knew what claims he was allowing. To overcome that presumption, alleged infringers are required to provide clear and convincing evidence that persons skilled in the art would not recognize in the disclosure a description of the claimed invention.

Patent Law > Nonobviousness > Elements & Tests > General Overview

Patent Law > Nonobviousness > Evidence & Procedure > Presumptions & Proof

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

[HN12] To establish that a patent claim is obvious, it must be shown by clear and convincing evidence, that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. 35 U.S.C.S. § 103(a). The question of obviousness turns on four factual inquiries: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) any objective indicators of non-obviousness, such as commercial success.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

Patent Law > Nonobviousness > Evidence & Procedure > General Overview

[HN13] The existence of each limitation of a claim in the prior art does not, by itself, demonstrate obviousness. Instead, there must be a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to combine the references, and that would also suggest a reasonable likelihood of success. Such a suggestion or motivation may come from the references themselves, from knowledge by those skilled in the art that certain references are of special interest in a field, or even from the nature of the problem to be solved. The burden of showing, by clear and convincing evidence, the invalidity of patent claims is especially difficult when the prior art was before the Patent and Trademark Office examiner during the prosecution of the application.

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN14] Objective evidence of non-obviousness may be used to rebut a prima facie case of obviousness based on prior art references. In determining whether an invention is non-obvious, there are at least nine objective factors: secondary considerations that may be considered: (1) a long-felt and unmet need in the art for the invention; (2) failure of others to achieve the results of the invention; (3) commercial success of the invention; (4) copying of the invention by others in the field; (5) whether the invention was contrary to accepted wisdom of the prior art; (6) expression of disbelief or skepticism by those skilled in the art upon learning of the invention; (7) unexpected results; (8) praise of the invention by those in the field; and (9) independent invention by others.

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For Defendants: Theodore B. Van Itallie, Jr., Esquire and Eric I. Harris, Esquire, Johnson & Johnson, New Brunswick, New Jersey.

JUDGES: Sue L. Robinson, Chief Judge.

OPINIONBY: Sue L. Robinson

OPINION:

[*424] **MEMORANDUM OPINION**

Dated: September 27, 2002
Wilmington, Delaware

Sue L. Robinson
Chief Judge

I. INTRODUCTION

Plaintiffs Scimed Life Systems, Inc., Boston Scientific Scimed, [**2] Inc., Boston Scientific Corporation

and Medinol, Ltd. filed this patent infringement action on December 20, 1999 against defendants Johnson & Johnson, Cordis Corporation and Johnson & Johnson Interventional Systems, Inc. Plaintiffs allege that defendants infringed certain claims of United States Patent Nos. 5,733,303 (the "'303 patent"), 5,843,120 (the "'120 patent"), and 5,972,018 (the "'018 patent") (collectively, the "Medinol patents"). Defendants seek a declaratory judgment that the asserted claims of the Medinol patents are invalid and not infringed [*425] by their BX Velocity, Crown, Mini-Crown and Corinthian stents. The court held a two-week jury trial on the issues of infringement and invalidity. Currently before the court are plaintiffs' motion for judgment as a matter of law and motion for a new trial.

II. BACKGROUND

A. The Technology

The dispute relates to balloon expandable stents. Balloon expandable stents and other types of stents are used to treat diseased blood vessels in the heart ("coronary arteries") and in other areas of the body ("peripheral arteries"). Coronary artery disease is caused by the buildup of fatty deposits on the inner lining of the coronary [**3] arteries. Known as atherosclerosis, this buildup narrows coronary arteries and may eventually block the flow of blood to the heart. Untreated coronary disease can have serious consequences, including angina, heart attack or even death. Similar narrowing in arteries away from the heart causes problems for people with peripheral artery disease.

Until about twenty-five years ago, the primary treatment for coronary lesions was medication or coronary artery bypass graft surgery. In approximately 1975, physicians began to use a non-surgical treatment called percutaneous transluminal coronary angioplasty, commonly known as "balloon angioplasty." During this procedure, a balloon attached to a wire catheter is snaked through a diseased artery until it reaches the site of blockage. A physician inflates the balloon, which compresses the fatty deposits against the vessel wall to open the artery and restore blood flow. The balloon and catheter are then removed from the body. Although balloon angioplasty represented a major advancement in combating artery disease, blood vessels often closed again within several months of the procedure. This recurrence of blockage is called "restenosis."

A stent [**4] improves the success of balloon angioplasty by minimizing the occurrence of restenosis. A stent is a small device that holds open an artery just like scaffolding inside a tunnel keeps the tunnel from collapsing. At issue in this case are balloon expandable stents which are used in conjunction with angioplasty balloons.

The stent is placed on a balloon and inserted into an artery via a catheter. Once the balloon is at the area of blockage, it is inflated, which causes the stent to expand and press against the vessel wall, thereby opening the artery. The balloon is then deflated and removed, leaving the expanded stent in the artery to keep the vessel open and allow blood to flow.

B. The Medinol Patents

The Medinol patents, invented by Henry Israel and Gregory Pinchasik and assigned to Medinol, claim certain flexible expandable stents. The Medinol patents share the same drawings and essentially the same specification, and are described as continuations of a series of applications beginning with Application Serial No. 282,181 (the "'181 application"), filed on July 28, 1994, and continuations-in-part of Application Serial No. 213,272 (the "'272 application"), which was filed on [**5] March 17, 1994 and issued as United States Patent No. 5,449,373. The Medinol patents generally describe and illustrate stent designs that achieve the objectives of flexibility during delivery, compensation for foreshortening, continuous uniform scaffolding, and resistance to radial deformation and collapse upon expansion. Figure 8 of the Medinol patents is reproduced below. The stent displayed in Figure 8 is made up of a continuous network of uniform closed cells 50, each of which has opposing horizontal loops 63 and 65 and flexible links 67 and 71.

[*426] [SEE FIG. 8 IN ORIGINAL]

1. The '303 Patent

The '303 patent issued on March 31, 1998 from Application Serial No. 457,354 (the "'354 application"), which was a continuation of the '181 application and a continuation-in-part of the '272 application. The claims of the '303 patent are directed to stents which have either: (1) flexible connected cells with a certain geometry or (2) meander patterns.

Claim 12 of the '303 patent is a claim which is dependent on claim 6. The claims read:

6. An expandable stent defining a longitudinal aperture, including: a plurality of flexible connected cells, each of said flexible cells comprising: [**6]
 - a) a first member having a longitudinal component having a first end and a second end;
 - b) a second member having a longitudinal component having a first end and a second end;

- c) a third member having a longitudinal component having a first end and a second end;
- d) a fourth member having a longitudinal component having a first end and a second end;
- e) a first loop defining a first angle disposed between said first end of said first member and said first end of said second member;
- f) a second loop defining a second angle disposed between said second end of said third member and said second end of said fourth member, and disposed generally opposite to said first loop;
- g) a first flexible compensating member or flexible link having a first end and a second end disposed between said [*427] first member and said third member, said first end of said first flexible compensating member or flexible link communicating with said second end of said first member and said second end of said first flexible compensating member or flexible link communicating with said first end of said third member, said first and said second ends disposed a variable longitudinal distance from each other.
- h) a second [**7] flexible compensating member or flexible link having a first end and a second end disposed between said second member and said fourth member, said first end of said second flexible compensating member or flexible link communicating with said second end of said second member and said second end of said second flexible compensating member or flexible link communicating with said first end of said fourth member, said first and said second ends disposed a variable longitudinal distance from each other, said first and said second flexible compensating member or flexible links differentially extendable or compressible when said stent is bent in a curved direction away from the longitudinal axis of said aperture; and
- i) said first, said second, said third, and said fourth members and said first and said second loops, and said first and said second flexible compensating member or flexible links disposed so that as said stent is expanded the distance between said first and said second flexible compensating member or flexible links increases and

the longitudinal component of said first, second, third and fourth members decreases while said first and said second loops remain generally opposite [**8] to one another, the ends of said first and said second flexible compensating member or flexible links open so as to increase said variable longitudinal distance between said first and said second ends of said first flexible compensating member or flexible link and so as to increase said variable longitudinal distance between said first and said second ends of said second flexible compensating member or flexible link so as to compensate for the decreasing of the longitudinal component of said first, second, third, and fourth members and substantially lessen the foreshortening of said stent upon its expansion.

12. The stent of claim 6, wherein said cells define a uniform cellular structure.

('303 patent, col. 7, Ins. 1-65, col. 8, Ins. 18-19)

The court construed disputed terms of the '303 patent as follows:

(1) **"Stent."** A device, made of a body-compatible material, used to widen a blood vessel or other body opening (also called a "lumen"), and to maintain the resultant size of the blood vessel or lumen.

(2) **"Cell."** An arrangement of structural elements that defines an enclosed space.

(3) **"Member having a longitudinal component."** A "member" [**9] is a structural element that has its ends at different longitudinal positions with respect to the stent's longitudinal axis. A member's "longitudinal component" is the distance between the longitudinal positions of the first and second ends of the member.

(4) **"Loop."** A structural element that turns back on itself.

(5) **"First loop" and "second loop."** Horizontally-facing (or C-shaped) loops at the cell's two longitudinal ends.

(6) **"Disposed between."** Positioned in the space that separates structural elements.

[*428] (7) **"Disposed generally opposite."** The first and second loops, defined as horizontally-facing structural elements, are positioned across from each other and approximately aligned with each other along the longitudinal axis of the stent.

(8) **"Flexible compensating member or flexible link."** A structural element that is flexible with respect to the stent's longitudinal axis and must be aligned along the longitudinal axis of the stent. A "flexible compensating member or flexible link" must connect adjacent cells, but the physical connection need not be made at points directly opposite each other.

(9) **"Communicating with."** [*10] "To have a common part, to be connected, join.

(10) **"Said first and said second ends disposed a variable longitudinal distance from each other."** The flexible compensating member or flexible link is positioned so that, upon expansion of the stent, the distance between its two ends changes along the stent's longitudinal axis.

(11) **"Disposed ... so as to substantially lessen the foreshortening of said stent upon its expansion."** This limitation encompasses an increase in the distance between the longitudinal positions of the ends of the flexible compensating members or flexible links that is caused by expansion of the stent by a balloon or other mechanical means.

(12) **"Uniform cellular structure."** The flexible connected cells of claim 6 have the same structure.

(D.I. 256)

2. The '120 Patent

The '120 patent issued on December 1, 1998 from Application Serial No. 881,594, a continuation of Application Serial No. 783,467 (the "'467 application"), which

was a continuation of the '354 application. The claims of the '120 patent are all directed to stents with meander patterns.

Claim 13 of the '120 patent reads:

13. An expandable stent [**11] formed of an elongated cylindrical unitary tube suitable for insertion into a lumen or blood vessel in which it may be expanded, comprising: a plurality of first meanders extending in a first direction on the cylinder of the tube and a plurality of second meanders extending in a second direction, on the cylinder of the tube, wherein the first and second meanders are formed with loops and are interconnected such that at least one of the loops of each of the first meanders is disposed between each consecutive second meander to which the first meander is connected, and at least one of the loops of each of the second meanders is disposed between each consecutive first meander to which it is connected; the first and second meanders defining a plurality of enclosed spaces.

('120 patent, col. 7, Ins. 13-26)

The court construed disputed terms of the '120 patent as follows:

"Meander." A periodic or repeating pattern of structural elements oriented about a center line. **"First meanders"** and **"second meanders"** identify and differentiate two different patterns.

(D.I. 256)

3. The '018 Patent

The '018 application issued on October 26, 1999 from Serial [**12] Application No. 026,999, which is a continuation of the '467 application. The claims of the '018 patent are directed to stents with meander patterns, cells or serpentine sections connected by flexible links. Claim 35 of the '018 patent reads:

[*429] 35. A flexible, expandable stent, comprising:

a plurality of flexible cells provided with a plurality of first loops and a plurality of second loops, said first loops and said second loops disposed and adapted to cooperate so that upon the expansion of said stent said first loops and said second loops change shape to compensate for the tendency of said stent to foreshorten when said stent is expanded.

('018 patent, col. 10, lns. 8-15)

Claim 47 of the '018 patent reads:

47. A generally longitudinally extending tubular stent which is substantially uniformly flexible with respect to its longitudinal axis by the flexibility of its cells with respect to said axis including:

(a) a plurality of cells flexible around said longitudinal axis connected to one another about the circumference of said stent to form a band of flexible cells, each of said flexible cells having apices disposed apart and generally opposite to one another, [**13]

(b) each of said flexible cells having a plurality of flexible links disposed apart and generally opposite to one another,

(c) each of said flexible links including a plurality of portions with neighboring portions having an area of inflection there between, and

(d) said flexible cells in said adjacent bands of flexible cells connected to one another.

('018 patent, col. 12, lns. 24-40)

Claim 60 of the '018 patent reads:

60. A stent having a longitudinal axis formed of a tube having a patterned shape, the patterned shape comprising:

a. first meander patterns having axes extending in a first direction;

b. second meander patterns having axes extending in a second direction, different than said first direction, wherein said second meander patterns intersect with said first meander patterns;

c. wherein said first meander patterns have loops;

d. wherein said first meander patterns are spaced apart to leave a portion of said second meander patterns between each pair of adjacent first meander patterns;

e. wherein each of said second meander patterns has at least one loop between at least one pair of adjacent first meander patterns; and

f. wherein said loops disposed [**14] on said first meander patterns and said loops disposed on said second meander patterns are disposed and adapted to cooperate so that upon the expansion of said stent said loops change shape to compensate for the tendency of said stent to foreshorten when said stent is expanded.

('018 patent, col. 16, lns. 4-25)

The court construed disputed terms of the '018 patent as follows:

(1) "A plurality of first loops and a plurality of second loops." Two sets of loops.

(2) "Disposed and adapted to cooperate so that upon expansion of said stent said first loops and said second loops change shape to compensate for the tendency of said stent to foreshorten when said stent is expanded." The two sets of loops must be oriented in different directions, one a generally vertical direction and one a generally horizontal or longitudinal direction. This limitation encompasses growth of one of the sets of loops in the longitudinal direction that is caused [*430] by expansion of the stent by a balloon or other mechanical means.

(3) "Stent which is substantially uniformly flexible with respect to its longitudinal axis by the flexibility of its cells with respect to said axis. [**15] " The structural elements of the cells provide longitudinal flexibility such that the flexibility of the stent is substantially uniform as one moves along the longitudinal axis of the stent.

(4) "Apices." Points at the two longitudinal ends of a cell of a stent.

(5) "Plurality of flexible links." Structural elements that serve to connect other structural elements but are themselves "disposed apart and generally opposite to one another."

(6) "Each of said flexible links including a plurality of portions with neighboring portions having an area of inflection there between." The flexible links are loops.

(7) "Wherein said loops disposed on said first meander patterns and said loops disposed on said second meander patterns are disposed and adapted to cooperate so that upon the expansion of said stent said loops change shape to compensate for the tendency of said stent to foreshorten when said stent is expanded." The loops disposed on the first meander patterns and the loops disposed on the second meander patterns must be oriented in different directions, one a generally vertical direction and one a generally horizontal or longitudinal direction. [**16] This limitation encompasses growth of one of the sets of loops in the longitudinal direction that is caused by expansion of the stent by a balloon or other mechanical means.

(D.I. 256)

C. The Accused Devices

1. BX Velocity Stent

Defendants' BX Velocity stent is composed of closed flexible cells, each of which has opposing horizontal loops connected by flexible N-shaped regions. When the BX Velocity stent is expanded, the "N-regions" lengthen to compensate for the shortening of the stent. A photograph and schematic of the BX Velocity stent are shown below.

[*431] [SEE FIGURE IN ORIGINAL]

[SEE FIGURE IN ORIGINAL]

2. Crown and Mini-Crown Stents

Defendants' Crown and Mini-Crown stents are composed of a series of serpentine-ring structures which are

fused together. A photograph and schematic of the Crown stent appear below.

[SEE FIGURE IN ORIGINAL]

[SEE FIGURE IN ORIGINAL]

The Mini-Crown is based on the design of the Crown stent, but is scaled to treat coronary arteries with a smaller diameter. Thus, the Mini-Crown has fewer rows [*432] than the Crown and is cut from a smaller and thinner-walled tube.

3. Corinthian Stent

Defendants' Corinthian stent has [**17] a similar structure to the Crown stent, but is larger and is used in the biliary system and other peripheral arteries rather than in coronary vessels. A photograph and schematic of the Corinthian stent are reproduced below.

[SEE FIGURE IN ORIGINAL]

[SEE FIGURE IN ORIGINAL]

Defendants are not challenging the jury's verdict regarding infringement by the Corinthian stent.

D. The Jury Verdict

On September 7, 2001, after a two-week trial, a jury returned the following verdict regarding the parties' claims of infringement and invalidity:

(1) BX Velocity Stent

(a) Claims 35, 47 and 60 of the '018 patent: no literal infringement; no infringement under the doctrine of equivalents; did not address the reverse doctrine of equivalents

(b) Claim 12 of the '303 patent: no infringement under the doctrine of equivalents n1

[*433] (2) Crown and Mini-Crown Stents

(a) Claim 13 of the '120 patent: no literal infringement

(3) Corinthian Stent

(a) Claim 13 of the '120 patent: literal infringement

The jury found all of the asserted claims invalid for both obviousness and failure to comply with the written description requirement [**18] except for claim 13 of the '120 patent, which the jury determined is valid. The jury also found that defendants' infringement was not willful, and awarded plaintiffs \$ 7,021,728 based on a 9% royalty rate for defendants' sale of the Corinthian stent in the United States, and \$ 1,279,556 based on a 7% royalty rate for defendants' foreign sales of the Corinthian stent manufactured in the United States. (D.I. 259)

n1 The court previously found that the BX Velocity stent does not literally contain the "communicating with" limitation of claim 6 of the '303 patent. (D.I. 227) Thus, the BX Velocity stent cannot literally infringe claim 12, which depends from claim 6.

III. STANDARDS OF REVIEW

A. Motion for Judgment as a Matter of Law

[HN1] To prevail on a renewed motion for judgment as a matter of law following a jury trial, the moving party "must show that the jury's findings, presumed or express, are not supported by substantial evidence or, if they were, that the legal conclusions implied [by] the jury's [**19] verdict cannot in law be supported by those findings." *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1348 (Fed. Cir. 1998) (quoting *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 893 (Fed. Cir. 1984)). "Substantial" evidence is such relevant evidence from the record taken as a whole as might be acceptable by a reasonable mind as adequate to support the finding under review." *Perkin-Elmer Corp.*, 732 F.2d at 893. [HN2] In assessing the sufficiency of the evidence, the court must give the non-moving party, "as [the] verdict winner, the benefit of all logical inferences that could be drawn from the evidence presented, resolve all conflicts in the evidence in his favor, and in general, view the record in the light most favorable to him." *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1348 (3d Cir. 1991); *Perkin-Elmer Corp.*, 732 F.2d at 893. The court may not determine the credibility of the witnesses nor "substitute its choice for

that of the jury between conflicting elements of the evidence." *Perkin-Elmer Corp.*, 732 F.2d at 893. In sum, the court must determine whether the evidence reasonably [**20] supports the jury's verdict. See *Dawn Equip. Co. v. Ky. Farms Inc.*, 140 F.3d 1009, 1014 (Fed. Cir. 1998).

B. Motion for a New Trial

Federal Rule of Civil Procedure 59(a) provides, in pertinent part:

[HN3] A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.

Fed. R. Civ. P. 59(a). [HN4] The decision to grant or deny a new trial is within the sound discretion of the trial court and, unlike the standard for determining judgment as a matter of law, the court need not view the evidence in the light most favorable to the verdict winner. See *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36, 66 L. Ed. 2d 193, 101 S. Ct. 188 (1980); *Olefins Trading, Inc. v. Han Yang Chem. Corp.*, 9 F.3d 282 (1993); *LifeScan Inc. v. Home Diagnostics, Inc.*, 103 F. Supp. 2d 345, 350 (D. Del. 2000) (citations omitted). See also 9A *Wright & Miller, Federal Practice and Procedure* § 2531 (2d ed. 1994) [HN5] ("On a motion [**21] for new trial the court may consider the credibility of witnesses and the weight of the evidence."). Among the most common reasons for granting a new trial are: (1) the jury's verdict is against the clear weight of the evidence, and a new trial must be granted to prevent a miscarriage [**434] of justice; (2) newly-discovered evidence exists that would likely alter the outcome of the trial; (3) improper conduct by an attorney or the court unfairly influenced the verdict; or (4) the jury's verdict was facially inconsistent. See *Zarow-Smith v. N.J. Transit Rail Operations*, 953 F. Supp. 581, 584-85 (D.N.J. 1997) (citations omitted). The court must proceed cautiously, mindful that it should not simply substitute its own judgment of the facts and the credibility of the witnesses for those of the jury. Rather, the court should grant a new trial on the basis that the verdict was against the weight of the evidence only where a miscarriage of justice would result if the verdict were to stand. See *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1352 (3d Cir. 1991); *EEOC v. State of Del. Dep't of Health and Soc. Servs.*, 865 F.2d 1408, 1413 (3d Cir. 1989). [**22]

IV. DISCUSSION n2

n2 Plaintiffs challenge the court's construction of several limitations contained in the claims of the Medinol patents. The court went through the claim construction exercise prior to trial and declines to readdress its conclusions in this opinion.

A. Infringement by the BX Velocity Stent

[HN6] A determination of infringement requires a two-step analysis. First, the court must construe the asserted claims so as to ascertain their meaning and scope. Second, the claims as construed are compared to the accused product. See *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1355 (Fed. Cir. 2000). Claim construction is a question of law while infringement is a question of fact. See *id.* To establish literal infringement, "every limitation set forth in a claim must be found in an accused product, exactly." *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed. Cir. 1995). An accused product that does not literally infringe a claim may [**23] still infringe under the doctrine of equivalents if each limitation of the claim is met in the accused product either literally or equivalently. See *Sextant Avionique, S.A. v. Analog Devices, Inc.*, 172 F.3d 817, 826 (Fed. Cir. 1999). An element in an accused product is equivalent to a claim limitation if the differences between the two are "insubstantial" to one of ordinary skill in the art. *KCJ Corp.*, 223 F.3d at 1359. A fact finder may also determine equivalence by assessing whether an element "does substantially the same thing in substantially the same way to get substantially the same result" as a claim limitation. *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1260 (Fed. Cir. 1989).

[HN7] Occasionally, "the issue of literal infringement may be resolved with the step of claim construction, for upon correct claim construction, it may be apparent whether the accused device is within the claims." *Multiform Desiccants, Inc. v. Medzam*, 133 F.3d 1473, 1476 (Fed. Cir. 1998). Similarly, the determination of infringement under the doctrine of equivalents may be limited as a matter of law. [HN8] Prosecution history [**24] estoppel can prevent a patentee from relying on the doctrine of equivalents when the patentee relinquishes subject matter during the prosecution of the patent, either by amendment or argument. See *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.*, 170 F.3d 1373, 1376-77 (Fed. Cir. 1999); *Dawn Equip.*, 140 F.3d at 1016.

1. "Flexible Compensating Member or Flexible Link"

Plaintiffs argue that defendants misinterpreted the court's claim construction and prejudiced the trial when they characterized the N-regions of the BX Velocity stent as "diagonal." Prior to trial, [**435] the court construed the limitation "flexible compensating member or flexible link" to require that the element "be aligned along the longitudinal axis of the stent." (D.I. 228) The court also denied plaintiffs' motion for summary judgment of literal infringement and, in doing so, limited the range of equivalents of "flexible compensating member or flexible link" to exclude connectors that join non-adjacent cells. n3 (D.I. 227) At trial, defendants conceded that the BX Velocity stent's N-regions connected adjacent cells and, therefore, did not present the issue of prosecution history estoppel [**25] to the jury. Instead, defendants based their non-infringement argument solely on the court's claim construction--that the "flexible compensating member or flexible link" in claims 12 and 47 must be "aligned along the longitudinal axis of the stent." n4 At trial, defendants presented the following testimony by Dr. Nigel Buller, defendants' medical expert:

Q. Now let's take a look at the flexible link requirement. This requires a flexible compensating member or flexible link, and the Court has given the following definition of flexible link: A structural element that is flexible with respect to the stent's longitudinal [axis] and must be aligned along the longitudinal [axis] of the stent. A flexible compensating member or flexible link must connect adjacent cells, but the physical connection need not be made at points directly opposite each other. Does the diagonal connector of the BX Velocity constitute a flexible link under this definition?

A. No.

Q. Why not?

A. Because, quite simply, because it is not aligned along the longitudinal [axis] of the stent. The BX Velocity's connector runs diagonally or spirally and, therefore, is clearly not aligned with the [**26] longitudinal [axis] of the stent.

Q. How many requirements do you understand that the Court's definition imposes on the definition of flexible link?

A. Two.

Q. Which are they?

A. The first sentence and the second sentence.

Q. Does BX Velocity meet the definition of the first sentence?

A. No.

[*436] Q. Is it aligned along the long--is its connector aligned along the longitudinal [axis] of the stent?

A. No. The connector is not aligned along the longitudinal [axis]. It runs diagonally or spirally.

(D.I. 271 at 1691-92) Thus, defendants presented sufficient evidence that the BX Velocity stent does not literally contain the "flexible compensating member or flexible link" limitation.

n3 The court determined that plaintiffs surrendered all elements that connect non-adjacent cells when they distinguished United States Patent No. 5,102,417 during prosecution of the Medinol patents. (D.I. 227 at 7)

n4 The Federal Circuit has emphasized the difference between claim construction and prosecution history estoppel:

[HN9] There is ... a clear distinction between following the statements in the prosecution history in defining a claim term, and the doctrine of prosecution history estoppel, which limits expansion of the protection under the doctrine of equivalents when a claim has been distinguished over relevant prior art. Claim interpretation in view of the prosecution history is a preliminary step in determining literal infringement, while prosecution history estoppel applies as a limitation on the range of equivalents if, after the claims have been properly interpreted, no literal infringement has been found. The limit on the range of equivalents that may be accorded a claim due

to prosecution history estoppel is simply irrelevant to the interpretation of those claims.

Southwall Techs., 54 F.3d at 1578. Although defendants' application of the court's claim construction was not anticipated by either the court or plaintiffs, defendants crafted their non-infringement case on a legally-permissible basis. Thus, the court shall deny plaintiffs' motion for a new trial on the ground that defendants' "diagonal" arguments misled and confused the jury, resulting in inconsistent verdicts.

[**27]

Dr. Buller also testified as to why the BX Velocity stent does not contain the "flexible compensating member or flexible link" limitation by equivalence:

Q. Now let's talk about the doctrine of equivalents. Do you have an opinion as to whether the flexibility connector or flexible link ... of the BX Velocity, about whether or not it is substantially different from the structures disclosed in the patent and claim?

A. Yes. The spiral connectors of the BX Velocity are substantially different from the connectors shown in the patents.

Q. And why are they substantially different?

A. Because they are spirally oriented. They are diagonally or spirally oriented. By virtue of that they cause twisting, which was specifically excluded in the patents in the Cordis case.

Q. What is the function of the flexible link or loop of Figure 7 which we're showing model the claims of the patent?

A. The function of the loop in the NIR stent or in this patent figure is to bring about flexibility in the stent without there being any twisting. And this is a generally longitudinal connector. It connects along points of alignment along the stent. Its function is flexibility, but [**28] it mustn't bring about any twisting as a result.

Q. Does the connecting of the BX Velocity serve the same function?

A. No. It does not serve the same function. It serves an entirely different function by bringing about twisting and by virtue of this arrangement bringing about increased flexibility. It does it in an entirely different way. That is to say, that it brings about twisting of the stent as one of its features and it has an entirely different result.

Q. Do you have an opinion as to whether or not the flexible link or loop in the BX Velocity is a substantial change?

A. It is most certainly a substantial change. It is changing diagonal or helical connector, that has very many benefits as a result of this change to spiral orientation.

Q. Let me show you the design path again. Does this have any bearing in your analysis as to whether the diagonal connectors of the BX Velocity is a substantial change from the patents in suit?

A. Yes. In the patents in suit, there is a conventional generally longitudinal connector, which was conventional wisdom at the time. The design for the BX Velocity rejected this conventional wisdom and, instead, went towards a [**29] diagonal or spiral connector. It accepted the twisting and, indeed, found there were many features as a result of this and, indeed, the final design was for diagonal or spiral connectors that were all in alignment along the length of the stent.

(Id. at 1695-98)

The court concludes that defendants presented sufficient evidence for a reasonable [*437] jury to determine that the BX Velocity stent does not contain the "flexible compensating member or flexible link" limitation of claims 12 and 47 either literally or by equivalence, regardless of whether its N-regions connect adjacent cells.

2. "Communicating With"

The court also finds that there was sufficient evidence in the record to support a reasonable jury's conclusion that the BX Velocity stent does not contain the

"communicating with" limitation of claim 12 of the '303 patent by equivalence. Dr. Buller testified that the BX Velocity stent's connector

communicates not with the third member at all but, in fact, with what you could label as the fourth member of the cell above. So once again, it is clearly showing that the connector in the BX Velocity stent is diagonally or spirally orientated. It goes from the [**30] first member of this cell to what is, in effect, the fourth member of the cell above and doesn't connect at all with the third member of the cell in question.

(Id. at 1690-91) Dr. Buller further explained that the function of the BX Velocity stent is substantially different than the function of the "communicating with" limitation, namely, that the BX Velocity stent used twisting to gain increased flexibility, whereas there is no twisting intended by the "communicating with" limitation of claim 12. (Id. at 1696-97) Thus, the jury could have arrived at its conclusion that the BX Velocity stent does not infringe claim 12 of the '303 patent by finding either that it does not contain the "flexible compensating member or flexible link" limitation or the "communicating with" limitation.

3. Compensation for Foreshortening

The court finds that defendants also presented sufficient evidence for a reasonable jury to conclude that the BX Velocity stent does not compensate for foreshortening as required by claims 35 and 60 of the '018 patent, i.e., that the connecting loop of claim 35 and the meander pattern of claim 60 are not "generally horizontal or longitudinal." At trial, [**31] Dr. Buller testified that the connectors of the BX Velocity stent "run diagonally or spirally" and function differently by causing twisting of the stent. (Id. at 1695-97) Because the jury could have found that the BX Velocity stent does not compensate for foreshortening either literally or by equivalence, the court concludes that the jury reasonably determined that the BX Velocity stent does not infringe claims 35 and 60 of the '018 patent.

4. "Substantially Uniformly Flexible"

Finally, the court finds that the jury could reasonably have determined that the BX Velocity stent does not infringe claim 47 of the '018 patent because it does not contain the "substantially uniformly flexible" limitation of claim 47 either literally or by equivalence. At trial, Dr. Buller gave the following testimony regarding claim 47:

Q. Let me direct your attention to the substantially uniform requirement of Claim 47. Claim 47 also requires a stent which is substantially uniformly flexible with respect to its longitudinal [axis]. And the Court has defined this to say that the structural elements of the cells provide longitudinal flexibility such that the flexibility of the stent is [**32] substantially uniform as one moves along the longitudinal [axis] of the stent.

Does the BX Velocity infringe that claim element?

A. No.

[*438] Q. Why not?

A. Because in the BX Velocity, the flexibility is very dominantly in the zone of flexible connectors. So moving along the stent as a whole, one first of all meets a relatively inflexible zone, followed by a very flexible zone and the flexible links, inflexible, very flexible, inflexible, very flexible. So all along the wave of the stent, the flexibility is in discrete bounds and isn't uniform along the stent

Q. Does the BX Velocity infringe the substantially uniform stent requirement of Claim 47?

A. No.

(Id. at 1693-94)

Thus, the jury could have found that the BX Velocity stent does not infringe claim 47 of the '018 patent because it does not contain the "flexible compensating member or flexible link" limitation or the "substantially uniformly flexible" limitation.

B. Infringement by the Crown and Mini-Crown Stents

The court concludes that substantial evidence supports the jury's verdict that the Crown and Mini-Crown stents do not infringe claim 13 of the '120 patent. Dr. Buller described [**33] the Crown stent as having "first meanders" that run longitudinally along the length of stent and are simply connected at certain points. He testified that the Crown stent does not contain "second me-

anders" as required by claim 13, nor does it contain any "loops" between two sets of meanders, also required by the claim. (Id. at 1702-04) Although plaintiffs characterized the structure of the Crown stent differently, the jury was entitled to accept defendants' interpretation of the Crown and Mini-Crown stents. Thus, the court finds that the jury's verdict as to infringement by the Crown and Mini-Crown stents was supported by substantial evidence, and plaintiffs are not entitled to judgment as a matter of law on this issue.

C. Invalidity For Failure to Comply with the Written Description Requirement

Plaintiffs challenge the jury's verdict that the asserted claims of the '303 and '018 patents are invalid for failure to comply with the written description requirement of 35 U.S.C. § 112, P 1, which provides:

[HN10] The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, [**34] concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

35 U.S.C. § 112, P 1.

[HN11] Patent claims are presumed valid. See 35 U.S.C. § 282. See also *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1054 (Fed. Cir. 1989) ("The presumption of validity under 35 U.S.C. § 282 carries with it a presumption the examiner did his duty and knew what claims he was allowing."). To overcome this presumption, defendants were required to "provide clear and convincing evidence that persons skilled in the art would not recognize in the disclosure a description of the claimed invention." *Biacore v. Thermo Bioanalysis Corp.*, 79 F. Supp. 2d 422, 467 (D. Del. 1999), *aff'd per curiam*, 30 Fed. Appx. 994, 2002 WL 418166 (Fed. Cir. 2002).

Defendants' evidence of invalidity of claims 12, 35, 47 and 60 for failure to comply with the written description requirement is essentially [**35] based on one exchange between defendants' counsel and Dr. Buller at trial:

[*439] Q. One final point, Dr. Buller. I want to just briefly address what is called the written description requirement. Do

you have an opinion as to whether the specification--let me state the requirement.

The question I am going to ask you about is whether the specification of the patents in suit show that the inventor actually possessed what he claimed at the time of the invention.

You understand that Medinol and Boston claim that the patents in suit include the diagonal connector of the BX Velocity. If that is so, do you have an opinion as to whether the specification of the patents in suit demonstrate that the inventor possessed such an invention?

A. No. The inventor clearly didn't possess this invention. I think it is very clear from reading the patents that the inventor specifically excluded a diagonal or spiral connector, because of their very great concern about twisting. So not only did they not include this design within their patents, they very specifically excluded it and said, we are not interested in something that would cause twisting.

(D.I. 271 at 1724)

The court finds [**36] that defendants did not present clear and convincing evidence such that a reasonable jury could conclude that the claims are invalid for failure to comply with the written description requirement. The claims do not encompass a connector that connects non-adjacent cells (determined by the court during the prosecution history estoppel analysis), nor do they cover the "diagonal" connectors of the BX Velocity stent which function by twisting (determined by the jury during the infringement analysis). Defendants maintain that there is some "middle ground" where the claims are broader than the specification (which declares that the invention aims to avoid twisting) but not broad enough to encompass the BX Velocity stent. The court finds that defendants have failed to present clear and convincing evidence of this "middle ground" at trial. Therefore, the court shall grant plaintiffs' motion for judgment as a matter of law as to the invalidity of claims 12, 35, 47 and 60 based on failure to comply with the written description requirement.

D. Invalidity for Obviousness

Plaintiffs move for judgment as a matter of law that the asserted claims of the '303 and '018 patents are not

invalid [**37] for obviousness. [HN12] To establish that a patent claim is obvious, it must be shown by clear and convincing evidence, that "the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103(a). The question of obviousness turns on four factual inquiries: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) any objective indicators of non-obviousness, such as commercial success. See *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966); *B.F. Goodrich Co. v. Aircraft Braking Sys. Corp.*, 72 F.3d 1577, 1582 (Fed. Cir. 1996).

[HN13] The existence of each limitation of a claim in the prior art does not, by itself, demonstrate obviousness. Instead, there must be a "reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to combine the references, and that would also suggest a reasonable likelihood of success." *Smiths Indus. Med. Sys., Inc. v. Vital Signs, Inc.*, 183 F.3d 1347, 1353 (Fed. Cir. 1999). [**38] "Such a suggestion or motivation may come from the references themselves, from knowledge [**440] by those skilled in the art that certain references are of special interest in a field, or even from the nature of the problem to be solved." *Id.* at 1356.

"The burden of showing, by clear and convincing evidence, the invalidity of patent claims is especially difficult when the prior art was before the PTO examiner during the prosecution of the application." *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 909 F.2d 1464, 1467 (Fed. Cir. 1990).

[HN14] "Objective evidence of non-obviousness may be used to rebut a prima facie case of obviousness based on prior art references." *Tec Air, Inc. v. Denso Mfg. Mich, Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999). In determining whether an invention is non-obvious, there are at least nine objective factors, i.e., "secondary considerations" that may be considered: (1) a long-felt and unmet need in the art for the invention; (2) failure of others to achieve the results of the invention; (3) commercial success of the invention; (4) copying of the invention by others in the field; (5) whether the invention was contrary to [**39] accepted wisdom of the prior art; (6) expression of disbelief or skepticism by those skilled in the art upon learning of the invention; (7) unexpected results; (8) praise of the invention by those in the field; and (9) independent invention by others. See *Graham*, 383 U.S. at 17-19; *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 667-68 (Fed. Cir. 2000).

The court finds that defendants presented substantial evidence to support a reasonable jury's conclusion that

claims 12, 35, 47 and 60 would have been obvious to one of ordinary skill in the art in July 1994, the time the inventions described in those claims were made.

First, defendants presented numerous prior art references available in July 1994 that disclosed key features of the inventions in the asserted claims of the '303 and '018 patents, namely, the use of serpentine rings to provide radial strength upon expansion (DX 6, 7, 8, 9, 18, 1172; D.I. 268 at 924-31; D.I. 270 at 1536-40, 1547-54; D.I. 271 at 1909-12, 1915), the use of flexible connectors to provide flexibility to the stent upon insertion (DX 8, 13, 36; PX 22; D.I. 268 at 945, 955-57; D.I. 270 at 1557-62, 1567-77, 1582-84), the use of flexible [**40] cells and multiple connectors to improve scaffolding (DX 8, 13, 18; PX 22; D.I. 270 at 1577-79, 1617-19; D.I. 271 at 1712), and compensation for foreshortening. (D.I. 271 at 1712, 1921)

Defendants then compared the prior art to the limitations of the claims and demonstrated that there was a motivation among those of ordinary skill in the art to place flexible, looped connectors between pairs of individual serpentine rings to maintain radial strength yet enhance flexibility. (DX 8, 13, 18, 36; PX 22; D.I. 268 at 956-65; D.I. 270 at 1557-62, 1567-77, 1582-84; D.I. 271 at 1710-12) Defendants also presented evidence that it would have been obvious for a person of ordinary skill in the art to increase the number of connectors around a stent to improve scaffolding. (DX 8, 13; PX 22; D.I. 270 at 1578-79; D.I. 271 at 1712) Specifically, defendants offered testimony that the necessary result of a combination of serpentine rings with looped connectors was that the rings would shorten longitudinally and the looped connectors would open to compensate for foreshortening, the feature upon which plaintiffs rested their non-obviousness argument at trial. (D.I. 268 at 1001-06; D.I. 269 at 1498-1501; [**41] D.I. 271 at 1712, 1921)

In addition, defendants demonstrated the lack of secondary considerations of non-obviousness, including the absence of a long-felt need for a stent that compensates for foreshortening (D.I. 267 at 649-53; D.I. 269 at 1476-78, 1498-1500), the success of the flexible Multi-Link stent, [*441] which is based on a patent that constitutes prior art to the Medinol patents (D.I. 266 at 621; D.I. 270 at 1546-51; DX 18), and independent invention of the stents encompassed by the asserted claims by others. (D.I. 271 at 1718-24; DX 12)

The record reflects substantial evidence that supports the jury's finding by clear and convincing evidence that the asserted claims of the '303 and '018 patents are invalid for obviousness over the prior art. Thus, the court shall deny plaintiffs' motion for judgment as a matter of law on this ground. n5

n5 Plaintiffs' motion for a new trial based on an inconsistent jury verdict on obviousness is denied. Claim 13 of the '120 patent has an additional limitation, i.e., that the stent must have "at least one of the loops of each of the first meanders disposed between each consecutive second meander to which the first meander is connected" over claim 60 of the '018 patent. This supports the jury's verdict that claim 13 is not invalid for obviousness whereas claim 60 is invalid.

[**42]

V. CONCLUSION

For the reasons stated, plaintiffs' motion for judgment as a matter of law is granted in part and denied in part. Plaintiffs' motion for a new trial is denied. An appropriate order shall issue and judgment shall be entered accordingly.

2002 U.S. Dist. LEXIS 9083, *

Time of Request: August 24, 2005 09:08 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

5 of 10 DOCUMENTS

CORDIS CORPORATION, Plaintiff, v. MEDTRONIC AVE, INC., BOSTON SCIENTIFIC CORPORATION and SCIMED LIFE SYSTEMS, INC., Defendants. MEDTRONIC AVE, INC., Plaintiff, v. CORDIS CORPORATION, JOHNSON & JOHNSON and EXPANDABLE GRAFTS PARTNERSHIP, Defendants. BOSTON SCIENTIFIC CORPORATION, Plaintiff, v. ETHICON, INC., CORDIS CORPORATION and JOHNSON & JOHNSON INTERVENTIONAL SYSTEMS CO., Defendants. CORDIS CORPORATION, Plaintiff, v. BOSTON SCIENTIFIC CORPORATION and SCIMED LIFE SYSTEMS, INC., Defendants.

Civil Action No. 97-550-SLR (consolidated) Civil Action No. 97-700-SLR, Civil Action No. 98-19-SLR, Civil Action No. 98-197-SLR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

2002 U.S. Dist. LEXIS 9083

May 15, 2002, Decided

SUBSEQUENT HISTORY: Reversed by, Remanded by Cordis Corp. v. Medtronic AVE, Inc., 2003 U.S. App. LEXIS 16521 (Fed. Cir., Aug. 12, 2003)

PRIOR HISTORY: Cordis Corp. v. Medtronic AVE, Inc., 194 F. Supp. 2d 323, 2002 U.S. Dist. LEXIS 5441 (D. Del., 2002)

DISPOSITION: Plaintiff's renewed motion for entry of judgment dismissing claims granted in part. Defendant Boston Scientific Corporation's motion for reconsideration granted.

CASE SUMMARY:

PROCEDURAL POSTURE: Following a patent infringement trial, an alleged infringer moved for reconsideration of its motion for a new trial. Another alleged infringer also moved for reconsideration of its motion for a new trial. The alleged patent holder renewed its motion for entry of judgment dismissing its claims against one of the alleged infringers, and also filed two motions for reargument.

OVERVIEW: In addressing the first alleged infringer's motion for reconsideration of its motion for a new trial,

the court committed legal error by failing to submit to the jury a detailed verdict form that itemized the jury's infringement analysis on a limitation-by-limitation basis. Although the court concluded that there was sufficient evidence to support a finding of literal infringement of the substantially uniform thickness limitation, it was possible that the jury relied on the doctrine of equivalents for its finding of infringement of that limitation. The second alleged infringer was entitled to a new trial if the United States Court of Appeals for the Federal Circuit reversed the court's grant of judgment as a matter of law. Three of the alleged patent holder's claims against the second alleged infringer were dismissed with prejudice, the second alleged infringer's claims regarding enforceability of the three claims were dismissed without prejudice. The alleged patent holder's motion for reargument of the grant of the first infringer's damages trial was denied. The alleged patent holder was not entitled to a permanent injunction against the first alleged infringer.

OUTCOME: The first alleged patent infringer's motion for reconsideration of its motion for new trial was granted. Another alleged patent infringer's motion for reconsideration was granted, and its motion for a new trial was granted in part and denied in part. The alleged infringer's renewed motion for entry of judgment dis-

missing its claims against one of the alleged infringers was granted, but its motion for reargument was denied.

LexisNexis(R) Headnotes

Civil Procedure > Trials > Judgment as Matter of Law

[HN1] Although an appellate court must sustain a jury verdict against a motion for judgment as a matter of law if there are any reasonable grounds for the verdict, an appellate court must also vacate a jury verdict and remand for a new trial if a jury may have relied on an impermissible basis in reaching its verdict.

Civil Procedure > Relief From Judgment > Motions for New Trial

[HN2] In our jurisprudence it is established that a general verdict must be set aside where the jury has been instructed that it could rely on two or more independent grounds or claims and one of those grounds or claims turns out to be insufficient.

Civil Procedure > Trials > Judgment as Matter of Law

[HN3] Pursuant to Fed. R. Civ. P. 50(c)(1), a court is required to address the merits of a party's motion for a new trial in the event that the Federal Circuit reverses the grant of that party's motion for judgment as a matter of law.

Patent Law > Infringement Actions > Doctrine of Equivalents > General Overview

Patent Law > Infringement Actions > Infringing Acts > Use

[HN4] It is entirely appropriate to use the essence of the invention to describe the doctrine of equivalents in a patent infringement case.

Patent Law > Infringement Actions > Doctrine of Equivalents > General Overview

Patent Law > Infringement Actions > Defenses > Patent Invalidity > General Overview

[HN5] Though applicable elsewhere, e.g., in determining infringement under the doctrine of equivalents, there is no legally recognized essence of the invention applicable in determining validity.

Patent Law > Infringement Actions > Doctrine of Equivalents > General Overview

Patent Law > Infringement Actions > Infringing Acts > General Overview

[HN6] Infringement, literal or by equivalence, is determined by comparing an accused product not with a preferred embodiment described in the specification, or with a commercialized embodiment of the patentee, but with the properly and previously construed claims in suit.

COUNSEL: [*1] For CORDIS CORPORATION, plaintiff: Steven J. Balick, Ashby & Geddes, Wilmington, DE.

For ARTERIAL VASCULAR ENGINEERING, INC., defendant: Patricia Smink Rogowski, Connolly, Bove, Lodge & Hutz, Wilmington, DE.

For BOSTON SCIENTIFIC CORPORATION, SCIMED LIFE SYSTEMS, INC., defendants: Josy W. Ingersoll, Young, Conaway, Stargatt & Taylor, Wilmington, DE.

For MEDTRONIC AVE, INC., defendant: Patricia Smink Rogowski, Connolly, Bove, Lodge & Hutz, Wilmington, DE.

For CORDIS CORPORATION, counter-defendant: Steven J. Balick, Ashby & Geddes, Wilmington, DE.

For BOSTON SCIENTIFIC CORPORATION, SCIMED LIFE SYSTEMS, INC., counter-claimants: Josy W. Ingersoll, Young, Conaway, Stargatt & Taylor, Wilmington, DE.

For MEDTRONIC AVE, INC., counter-claimant: Patricia Smink Rogowski, Connolly, Bove, Lodge & Hutz, Wilmington, DE.

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For CORDIS CORPORATION, JOHNSON AND JOHNSON, EXPANDABLE GRAFTS PARTNERSHIP, counter-claimants: Steven J. Balick, Ashby & Geddes, Wilmington, DE.

For ARTERIAL VASCULAR ENGINEERING, INC., counter-defendant: [*2] Patricia Smink Rogowski, Connolly, Bove, Lodge & Hutz, Wilmington, DE.

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For ETHICON INC., JOHNSON AND JOHNSON INTERVENTIONAL SYSTEMS CO., CORDIS CORPORATION, defendants: Steven J. Balick, Ashby & Geddes, Wilmington, DE.

JUDGES: Sue L. Robinson, United States District Judge.

OPINIONBY: Sue L. Robinson

OPINION:

MEMORANDUM ORDER

At Wilmington, this 15th day of May, 2002, having reviewed the parties' motions for reconsideration of the court's opinion and order dated March 28, 2002;

IT IS ORDERED that:

1. BSC's motion for reconsideration of its motion for a new trial on infringement of the "substantially uniform thickness" limitation (D.I. 1130) is granted. Although the prosecution history of United States Patent No. 4,739,762 (the "'762 patent") had been reviewed by the court for purposes of claim construction, the issue of whether the doctrine of prosecution history estoppel precluded Cordis from seeking infringement by equivalence was not submitted by defendants for the court's consideration until trial had commenced. (D.I. 947, 992) Faced [*3] with a legal question raised for the first time during trial, the court declined to submit the question to the jury. BSC argues that the court committed legal error by not submitting to the jury a detailed verdict form that itemized the jury's infringement analysis on a limitation-by-limitation basis. The court finds that it did commit legal error in this regard.

As an initial matter, the court finds that both defendants submitted detailed jury instructions and only accepted the final version of the jury instructions after the court, consistent with Cordis' position, rejected the more lengthy, complicated versions proffered by defendants. Therefore, contrary to Cordis' argument, neither defendant waived its position regarding the proper form of jury verdict.

As to the merits of BSC's motion, the court concludes that BSC is entitled to a new trial on infringement of the "substantially uniform thickness" limitation. As explained by the Federal Circuit in *Litton Sys., Inc. v. Honeywell, Inc.*, 140 F.3d 1449 (Fed. Cir. 1998),

[HN1] although an appellate court must sustain a jury verdict against a JMOL if there are any reasonable grounds for the verdict, an appellate [*4] court must also vacate a jury verdict and remand for a new trial if a jury may have relied on an impermissible basis in reaching its verdict.

Id. at 1465 (emphasis in original) (citations omitted). See also *Carden v. Westinghouse Elec. Corp.*, 850 F.2d

996, 1000 (3d Cir. 1988) [HN2] ("In our jurisprudence it has been established that a general verdict must be set aside where the jury has been instructed that it could rely on two or more independent grounds or claims and one of those grounds or claims turns out to be insufficient."); *Molten Metal Equip. Innovations, Inc. v. Metallux Sys. Co.*, 130 F. Supp. 2d 917, 923 (N.D. Ohio 2001).

In this case, although the court concluded that there was sufficient evidence to support a finding of literal infringement of the "substantially uniform thickness" limitation (thus meeting the JMOL standard), it is possible that the jury relied on the doctrine of equivalents for its finding of infringement of that limitation. Under these circumstances, where the court has found that Cordis is not entitled to any range of equivalents for the "substantially uniform thickness" limitation, it was not harmless [*5] error for the court to have given the jury a general verdict form. Therefore, the jury's verdict as to BSC's infringement of claim 23 of the '762 patent is vacated, and a new trial shall be conducted to determine whether BSC has infringed the "substantially uniform thickness" limitation.

2. AVE's motion for reconsideration of its motion for a new trial (D.I. 1131) is granted. [HN3] Pursuant to Fed. R. Civ. P. 50(c)(1), the court is required to address the merits of AVE's motion for a new trial in the event that the Federal Circuit reverses the grant of AVE's motion for judgment as a matter of law. AVE's motion for a new trial is granted in part and denied in part for the following reasons:

a. "Essence of the Invention" Arguments. AVE argues that it is entitled to a new trial because Cordis improperly compared the AVE stents to the "essence of the invention" of the '762 patent and United States Patent No. 5,195,984 (the "'984 patent") rather than to the asserted claims. The Federal Circuit has stated that [HN4] it is entirely appropriate to use the "essence of the invention" to describe the doctrine of equivalents. See *London v. Carson, Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991) [*6] ("The patentee should not be deprived of the benefits of his patent by competitors who appropriate the essence of an invention while barely avoiding the literal language of the claims."); *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 1567 (Fed. Cir. 1983) [HN5] ("Though applicable elsewhere, e.g., in determining infringement under the doctrine of equivalents, there is no legally recognized 'essence' of the invention applicable in determining validity."). Consequently, the court included the following description of the infringement analysis in its charge to the jury:

On the other hand, the patent owner should not be deprived of the benefits of

his patent by competitors who appropriate the essence of an invention while barely avoiding the literal language of the patent claims.

(D.I. 1115)

In the absence of a limitation-by-limitation analysis of the asserted claims and an instruction by the court to perform such an analysis, Cordis' references to the "essence of the invention" would perhaps be misleading to a jury. During the AVE trial, however, Cordis presented a detailed comparison of the asserted claim limitations to the AVE stents through [*7] the testimony of Drs. Buller and Collins. (D.I. 960 at 604-719; D.I. 962 at 1255-1305) Furthermore, the court instructed the jury to perform a limitation-by-limitation analysis to determine infringement (D.I. 1115), and the court must presume that the jury followed its instructions. See *Jones v. United States*, 527 U.S. 373, 401, 144 L. Ed. 2d 370, 119 S. Ct. 2090 (1999). Thus, because the court finds that the parties and the court presented the jury with the correct analysis to determine infringement under the doctrine of equivalents and that Cordis' references to the "essence of the invention" were not prejudicial, AVE is not entitled to a new trial on these grounds. n1

n1 AVE also contends that Cordis contributed to jury confusion by referring to the "essence" of United States Patent No. 4,733,665 (the "'665 patent"), which was not asserted at trial. The court agrees with Cordis that testimony regarding the '665 patent was limited to establishing a priority date for the '762 patent, and that any references by Cordis to the "essence" of the '665 patent were not prejudicial or cause for jury confusion.

[*8]

b. **"Building Block" Arguments.** AVE also contends that it is entitled to a new trial because Cordis compared the AVE stents to the "building block" rather than to the asserted claims of the '762 and '984 patents. [HN6] "Infringement, literal or by equivalence, is determined by comparing an accused product not with a preferred embodiment described in the specification, or with a commercialized embodiment of the patentee, but with the properly and previously construed claims in suit." *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985).

Although the term "building block" does not appear in the patents, a completely half-slotted stent is not inconsistent with the patent claims as construed by the

court. Cordis used its "building block" analogy appropriately, that is, in conjunction with a limitation-by-limitation comparison of the patent claims to the AVE stents. Furthermore, the court permitted AVE to respond to Cordis' use of the "building block" analogy through cross-examination, and concludes that AVE was not unduly prejudiced by it. n2 (D.I. 959 at 422-23) AVE's motion for a new trial on this basis is denied.

n2 Because the "building block" analogy was used to illustrate infringement of the '762 patent and not the '984 patent, the court appropriately limited AVE's cross-examination of Dr. Schatz regarding it. (D.I. 962 at 1130-31)

[*9]

c. **Lack of a Detailed Verdict Form.** AVE contends that a new trial is warranted because the court did not use a limitation-by-limitation verdict form to preclude the jury from finding literal infringement of the "plurality of slots formed therein" limitation pursuant to the court's grant of summary judgment prior to trial, and infringement by equivalence of the "substantially uniform thickness" limitation pursuant to the court's finding of prosecution history estoppel after trial. The court finds that, because Cordis did not present a literal infringement argument regarding the "plurality of slots formed therein" limitation at trial, n3 AVE is not entitled to a new trial on infringement of that limitation. For the reasons stated above regarding BSC's motion for a new trial, however, AVE's motion for a new trial on infringement of the "substantially uniform thickness" limitation is granted in the event that the Federal Circuit reverses the court's grant of judgment as a matter of law.

n3 Significantly, Dr. Collins specifically stated that Cordis was alleging infringement of that limitation **only** under the doctrine of equivalents:

Q. Just to make sure that is clear, I understand you to be saying there is an equivalent. But my question was, AVE's products do not literally have slots formed therein. Correct, Dr. Collins?

A. They do not literally have slots formed therein, given the definition of slots formed therein, but they have an equivalent.

(D.I. 962 at 1334)

[*10]

d. **Verdict Against the Weight of the Evidence.** AVE's motion for a new trial based on the all-inclusive argument that Cordis' various litigation strategies caused the jury to disregard the clear weight of the evidence is denied.

3. Cordis' renewed motion for entry of judgment dismissing its claims against AVE on United States Patent Nos. 5,902,332 (the " '332 patent") and 5,102,417 (the " '417 patent") (D.I. 1132) is granted as follows:

a. Cordis' and AVE's claims regarding infringement of claims 1, 3 and 5 of the '332 patent and of claims of the '417 patent are dismissed with prejudice.

b. AVE's claims regarding validity and enforceability of claims 1, 3 and 5 of the '332 patent and of claims of the '417 patent are dismissed without prejudice.

4. Cordis' motion for reargument of the grant of a new BSC damages trial (D.I. 1135) is denied. The court finds that BSC did not unconditionally stipulate that the AVE stents infringed the asserted claims of the '762 and '984 patents.

5. Cordis' motion for reargument of the denial of an injunction against BSC with leave to renew or, in the alternative, for an order under Fed. R. Civ. P. 54(b) di-

recting the entry of judgment on Cordis' [*11] claims against AVE (D.I. 1133) is granted in part and denied in part. Because the court granted BSC's motion for a new trial on infringement of the "substantially uniform thickness" limitation, Cordis is not entitled to entry of a permanent injunction against BSC at this time. Because all issues concerning AVE have been finally adjudicated and there is no just cause for delay, n4 the court will enter judgment as to AVE pursuant to Fed. R. Civ. P. 54(b).

n4 An immediate appeal as to AVE may eliminate the need to conduct a retrial on the outstanding issues regarding BSC. Furthermore, an immediate appeal would expedite the resolution of a related case, Cordis Corp. v. Medtronic AVE, Inc., Civil Action No. 00-886-SLR.

6. The retrial of infringement of the "substantially uniform thickness" limitation and damages as to BSC is stayed pending the resolution of the appeal of issues concerning AVE by the Federal Circuit.

May 15, 2002

Sue L. Robinson

United States District [*12] Judge

109C25

Time of Request: August 24, 2005 09:09 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

6 of 10 DOCUMENTS

**SCIMED LIFE SYSTEMS, INC., BOSTON SCIENTIFIC SCIMED, INC.,
BOSTON SCIENTIFIC CORPORATION and MEDINOL, LTD., Plaintiffs, v.
JOHNSON & JOHNSON, CORDIS CORPORATION and JOHNSON &
JOHNSON INTERVENTIONAL SYSTEMS, INC., Defendants.**

Civil Action No. 99-904-SLR (consolidated)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

2001 U.S. Dist. LEXIS 12862

August 15, 2001, Decided

CASE SUMMARY:

PROCEDURAL POSTURE: In a consolidated action, plaintiff patent holders sued defendant corporations for willfully infringing and inducing infringement of their patents for certain flexible expandable stents. The parties filed various motions for summary judgment.

OVERVIEW: The court found that one corporation's stent did not literally infringe any of the asserted claims of the patents because the ends of its stent did not communicate with each other. Rather, the ends communicated with the structural elements of other cells. Since the other claims of literal infringement depended on that communication claim, they failed as well and the patent holders were limited to alleging that the corporation's stent infringed the patent claims only by the doctrine of equivalents. The patent holders were estopped from arguing that any diagonal, helical, or spiral element was a flexible compensating member or flexible link because they had surrendered all such connector members when they distinguished another patent during prosecution. Figures that were submitted with a patent application were not prior art as they were never revealed to the public after the patent application was abandoned and they were not actually reduced to practice. A jury verdict in another action did not estop the patent holders from presenting evidence of lost profits because the issues in that case were not the same and the adverse verdict was not final.

OUTCOME: The patent holders' motion that the asserted claims of the patents were not anticipated and their motion that figures submitted with abandoned patent application were not prior art were granted. All other motions were denied.

LexisNexis(R) Headnotes

Patent Law > Inequitable Conduct > General Overview
Patent Law > Infringement Actions > Summary Judgment > General Overview

[HN1] In the context of a patent infringement claim, a court shall grant summary judgment only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

Patent Law > Infringement Actions > Burdens of Proof
Patent Law > Inequitable Conduct > Burdens of Proof
Patent Law > Infringement Actions > Summary Judgment > General Overview

[HN2] In the context of a patent infringement claim, the party moving for summary judgment bears the burden of proving that no genuine issue of material fact exists. Facts that could alter the outcome are material and disputes are genuine if evidence exists from which a rational person could conclude that the position of the per-

son with the burden of proof on the disputed issue is correct. If the moving party has demonstrated an absence of material fact, the nonmoving party then must come forward with specific facts showing that there is a genuine issue for trial. The court will view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion. The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue.

***Patent Law > Infringement Actions > Burdens of Proof
Patent Law > Infringement Actions > Summary Judgment > General Overview***

[HN3] In the context of a patent infringement action, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law.

***Patent Law > Infringement Actions > Doctrine of Equivalents > Fact & Law Issues
Patent Law > Infringement Actions > Infringing Acts > General Overview***

[HN4] A determination of infringement requires a two-step analysis. First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process. In order for a court to find infringement, the plaintiff must show the presence of every limitation or its substantial equivalent in the accused device. The determination of infringement, whether literal or under the doctrine of equivalents, is a question of fact.

***Patent Law > Infringement Actions > Prosecution History Estoppel > Abandonment & Amendment
Patent Law > Infringement Actions > Summary Judgment > General Overview***

[HN5] An infringement issue is properly decided upon summary judgment when no reasonable jury could find that every limitation recited in the properly construed claim either is or is not found in the accused device either literally or under the doctrine of equivalents. A finding of infringement under the doctrine of equivalents may be barred, however, if the patentee attempts to reclaim subject matter that it previously surrendered during prosecution.

Patent Law > Anticipation & Novelty > Elements
[HN6] See 35 U.S.C.S. § 102(g).

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

[HN7] One of the fundamental principles of patent law is that prior art be available to the public.

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For Defendants: Steven J. Balick, Esquire, Steven T. Margolin, Esquire, Ashby & Geddes, Wilmington, Delaware.

For Defendants: Gregory L. Diskant, Esquire, William F. Cavanaugh, Jr., Esquire, Michael J. Timmons, Esquire, Russell W. Faegenburg, Esquire, Of Counsel, Patterson, Belknap, Webb & Tyler, LLP, New York, New York.

JUDGES: ROBINSON, Chief Judge.

OPINIONBY: ROBINSON

OPINION:

MEMORANDUM OPINION

Dated: August 15, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

In this consolidated action, plaintiffs Scimed Life Systems, Inc. ("Scimed"), Boston Scientific Scimed, Inc. ("BSSI"), Boston Scientific Corporation ("BSC"), and Medinol, Ltd. ("Medinol") allege that defendants Johnson & Johnson ("J&J"), Cordis Corporation ("Cordis"), and Johnson & Johnson Interventional Systems, Inc. ("JJIS") willfully [*2] infringe and induce infringement of United States Patent Nos. 5,733,303 (the "'303 patent"), 5,843,120 (the "'120 patent"), and 5,972,018 (the "'018 patent") (collectively, the "Medinol patents"). The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

Currently before the court are various motions for summary judgment. n1 For the following reasons, the court shall deny plaintiffs' motion for summary judgment

of literal infringement of the asserted claims of the '303 and '018 patents by the BX Velocity stent (D.I. 152), deny defendants' motion for summary judgment of non-infringement of claims 13 and 17 of the '120 patent by the Crown and Mini-Crown stents (D.I. 140), deny defendants' motion for summary judgment of non-infringement of the asserted claims of the Medinol patents by the BX Velocity stent (D.I. 146), grant plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by United States Patent No. 5,102,417 (the " '417 patent") (D.I. 154), deny as moot plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by United States [*3] Patent No. 5,449,373 (the "'373 patent") (D.I. 148), grant plaintiffs' motion for summary judgment that the stent designs in Figures 13, 14a and 14b of Application Serial No. 08/246,320 are not prior art (D.I. 150), and deny defendants' motion for summary judgment precluding lost profits damages for hypothetical United States sales of the NIR stent. n2 (D.I. 142)

n1 Also pending before the court is defendants' motion for leave to file an amended answer and counterclaim. (D.I. 117) Defendants' motion is denied as untimely.

n2 Defendants concede that if the court construes the asserted claims of the Medinol patents to disclaim the spiral or helical connectors of the '417 patent, then the '417 patent does not anticipate the Medinol patents. The court has adopted that construction and, therefore, plaintiffs' motion that the '417 patent does not anticipate the asserted claims is granted. Furthermore, defendants have agreed not to assert the '373 patent as an anticipatory reference, rendering plaintiffs' motion that the '373 patent does not anticipate the asserted claims moot.

[*4]

II. BACKGROUND

The Medinol patents, invented by Henry Israel and Gregory Pinchasik and assigned to Medinol, claim certain flexible expandable stents. The Medinol patents share the same drawings and essentially the same specification, and are described as continuations of a series of applications beginning with Application Serial No. 282,181, filed on July 28, 1994, and continuations-in-part of Application Serial No. 213,272, which was filed on March 17, 1994 and issued as the '373 patent. Plaintiffs allege that defendants' BX Velocity, Crown, Mini-Crown and Corinthian stents infringe claims 6, 7, 8, 9,

10, 12 and 13 of the '303 patent, claims 13 and 17 of the '120 patent, and claims 35, 39, 47, 60 and 63 of the '018 patent.

A. The Burmeister Application

During May 1994, Scimed engineers Paul Burmeister, Brian Brown, Charles Eteneuer and Paul Fordenbacher ("Applicants") evaluated the concept of a hybrid stent that would partially self-expand and then fully expand with a balloon. Applicants filed for a patent on their invention on May 19, 1994 (the "Burmeister Application") that included several pages of drawings. (D.I. 156, Ex. M) Although Applicants indicated that [*5] they intended to send eighteen sheets of drawings, the Patent Office file reflects that only fifteen sheets were included. Those fifteen sheets contained Figures 1-10, 11b, 12 and 13, but not Figures 11a, 14a or 14b. n3 (Id.) On August 19, 1994, new drawings were submitted that also included Figures 11a, 14a and 14b. (Id.) On November 28, 1995, the Patent Office issued a Notice of Abandonment for Applicant's failure to respond to an April 26, 1995 Office Action. n4 (Id.) On May 18, 1995, Applicants filed an International PCT Application based on the Burmeister Application, but different drawings were substituted as Figures 13 and 14. The PCT Application was first published on November 30, 1995 and issued as European Patent Specification EP 0759730B1 on February 10, 1999. (D.I. 170, Ex. 49)

n3 Defendants contend that Applicants did include Figures 13, 14a and 14b in their May 19, 1994 submission, and the Patent Office later misplaced the drawings. (D.I. 167 at 12)

n4 Plaintiffs contend that no further work was performed on Figures 13, 14a and 14b prior to the filing date of the Medinol patents which, for the purpose of the motion for summary judgment regarding the Burmeister Application, the parties agree is July 28, 1994. (D.I. 151 at 4)

[*6]

III. STANDARD OF REVIEW

[HN1] A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). [HN2] The moving party bears the burden of proving that no genuine issue of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.10, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). "Facts

that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." *Horowitz v. Fed. Kemper Life Assurance Co.*, 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita*, 475 U.S. at 587 (quoting *Fed. R. Civ. P.* 56(e)). [*7] The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." *Pa. Coal Ass'n v. Babbitt*, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). [HN3] If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986).

IV. DISCUSSION

A. Infringement by Defendants' BX Velocity, Crown and Mini-Crown Stents

[HN4] A determination of infringement requires a two-step analysis. "First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be [*8] compared to the accused device or process." *Carroll Touch, Inc. v. Electro Mech. Sys., Inc.*, 15 F.3d 1573, 1576 (Fed. Cir. 1993). "In order for a court to find infringement, the plaintiff must show the presence of every . . . [limitation] or its substantial equivalent in the accused device." *Wolverine World Wide, Inc. v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994). The determination of infringement, whether literal or under the doctrine of equivalents, is a question of fact. See *Bai v. L & L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998). [HN5] An infringement issue is properly decided upon summary judgment when no reasonable jury could find that every limitation recited in the properly construed claim either is or is not found in the accused device either literally or under the doctrine of equivalents. See *id.* A finding of infringement under the doctrine of equivalents may be barred, however, if the patentee attempts to reclaim subject matter that it previously surrendered during prosecution. See *Hilgraeve Corp. v. McAfee Assocs. Inc.*, 224 F.3d 1349, 1355 (Fed. Cir. 2000) ("Prosecution history

estoppel bars [*9] recapture of subject matter surrendered during prosecution.").

The court finds that defendants' BX Velocity stent does not literally infringe claim 6 of the '303 patent. The "second end" of the BX Velocity's "first flexible compensating member or flexible link" does not "communicate with" the "first end" of its "third member having a longitudinal component." ('303 patent, claim 6(g)) Similarly, the "first end" of the BX Velocity's "second flexible compensating member or flexible link" does not "communicate with" the "second end" of its "second member having a longitudinal component." ('303 patent, claim 6(h)) The ends of these "flexible compensating members or flexible links" actually "communicate with" the structural elements of other cells. ('303 patent, claim 6(e), (f)) Thus, because claims 7, 8, 9, 10, 12 and 13 ultimately depend on claim 6 of the '303 patent, the court concludes that defendants' BX Velocity stent does not literally infringe any of the asserted claims of the '303 patent. Plaintiffs are limited to alleging that the BX Velocity stent infringes those claims only by the doctrine of equivalents. n5

n5 Because the jury may only find that the BX Velocity stent infringes the "communicating with" limitation by the doctrine of equivalents, the court will create a detailed verdict form, separating the limitations of claim 6 into individual questions.

[*10]

The court also finds that there is a limited range of equivalents on the "flexible compensating member or flexible link" limitation of claim 6 of the '303 patent. Plaintiffs surrendered all diagonal, helical or spiral connector members when they distinguished the '417 patent during prosecution. (D.I. 137, Ex. 9 at 00059-60; D.I. 138, Ex. 3 at 00175-76) Consistent with the court's claim construction, therefore, plaintiffs are estopped from arguing that any diagonal, helical or spiral element, i.e., a connector member that connects adjacent cells, is a "flexible compensating member or flexible link." With regard to the BX Velocity stent, the court concludes that there are genuine issues of material fact as to whether the "N-regions" of the stent infringe the "flexible compensating member or flexible link" limitation of claim 6 literally or by the doctrine of equivalents.

Finally, the court finds that there are genuine issues of material fact as to whether the BX Velocity, Crown or Mini-Crown stents infringe the asserted claims of the '120 patent, and whether the BX Velocity stent infringes the asserted claims of the '018 patent.

B. Figures 13, 14a and 14b of the Burmeister Application [*11] as Prior Art

Plaintiffs argue that Figures 13, 14a and 14b of the Burmeister Application are not prior art to the Medinol patents under [HN6] 35 U.S.C. § 102(g), which states that an applicant is not entitled to a patent if

before the applicant's invention thereof the invention was **made in this country by another who had not abandoned, suppressed, or concealed it.** In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

(Emphasis added) Specifically, plaintiffs contend that although the Burmeister Application was arguably abandoned after the filing date of the Medinol patents, that abandonment vitiated the "constructive" reduction to practice created by the filing of the Burmeister Application. Thus, according to plaintiffs, the Burmeister invention was never "made" since it was never reduced to practice. n6 See *In re Costello*, 717 F.2d 1346, 1350 (Fed. Cir. 1983) ("It has long been settled, [*12] and we continue to approve the rule, that an abandoned application, with which no subsequent application was copending, cannot be considered a constructive reduction to practice."). Defendants cite case law to the contrary, that an abandonment of an application must occur prior to the filing date of a patent in order to exclude that application as prior art pursuant to Section 102(g). See *Allen v. Brady*, 508 F.2d 64, 67 (7th Cir. 1974) ("As we read the language [of Section 102(g)], the abandonment is irrelevant unless it occurred 'before the applicant's invention.' The use of the pluperfect tense -- 'had not abandoned' -- plainly refers to an abandonment which occurred 'before the applicant's invention.'").

n6 The parties agree that Figures 13, 14a and 14b of the Burmeister Application were never actually reduced to practice. (D.I. 185 at 6)

Although defendants present a respectable argument based on statutory interpretation, their position directly contradicts [HN7] one of the fundamental [*13] principles of patent law -- that prior art be available to the public. See *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 1453 (Fed. Cir. 1984) ("That is the real

meaning of 'prior art' in legal theory -- it is **knowledge that is available**, including what would be obvious from it, at a given time, to a person of ordinary skill in an art.") (emphasis added). See also *Graham v. John Deere Co.*, 383 U.S. 1, 6, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966) (stating that no patent should be granted which withdraws from the public domain technology already publicly available). The Burmeister Application was abandoned and the relevant drawings were never revealed to the public, nor were they actually reduced to practice. The only reason the drawings are at issue now is because Scimed, licensed by Medinol, is a party to this action and produced the drawings in discovery. In the absence of a voluntary publication of the Burmeister Application, the drawings never would have surfaced as potential prior art. Therefore, the court grants plaintiffs' motion for summary judgment that the stent designs in Figures 13, 14a and 14b of the Burmeister Application [*14] are not prior art. n7

n7 Moreover, adopting defendants' position would lead to the "anomalous" result of potentially depriving plaintiffs of their rights in the Medinol patents **because they developed their inventions too soon**, instead of after the abandonment of the Burmeister Application. See *Donald Chisum, Chisum on Patents* § 10.08[51] (2001).

C. Recovery of Lost Profits on Hypothetical Sales of the NIR Stent

Defendants have moved to preclude plaintiffs from presenting any evidence on lost profits based on sales of the NIR stent, arguing that plaintiffs should not be permitted to assert that its NIR stent was properly on the market as a non-infringing product. Defendants base their argument on the jury verdict rendered against plaintiffs and in favor of defendants in *Cordis Corp. v. Boston Scientific Corp.*, No. 97-550-SLR (D. Del. verdict rendered on Dec. 11, 2000) (the "97-550 case").

The court concludes, however, that the jury verdict in the 97-550 case should not serve as an [*15] estoppel in this case. First, the issues tried in the 97-550 case are not the same issues that are going to be tried in the case at bar. Second, the adverse verdict is not a final one; given the possibility of the verdict being overturned in whole or in part on appeal, judicial economy suggests trying the case at bar on all issues. Finally, notions of equity support plaintiffs' position, that is, plaintiffs should not be precluded from presenting all issues just because defendants were the first to get to trial.

The court recognizes the complexities in these cases, but concludes that the case at bar should be tried without regard to the jury verdict returned in the 97-550 case. Therefore, defendants' motion for summary judgment precluding lost profits damages for hypothetical United States sales of the NIR stent is denied.

V. CONCLUSION

For the reasons stated, the court shall deny plaintiffs' motion for summary judgment of literal infringement of the asserted claims of the '303 and '018 patents by the BX Velocity stent, deny defendants' motion for summary judgment of non-infringement of claims 13 and 17 of the '120 patent by the Crown and Mini-Crown stents, deny defendants' [*16] motion for summary judgment of non-infringement of the asserted claims of the Medinol patents by the BX Velocity stent, grant plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by the '417 patent, deny as moot plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by the '373 patent, grant plaintiffs' motion for summary judgment that the stent designs in Figures 13, 14a and 14b of the Burmeister Application are not prior art, deny defendants' motion for summary judgment precluding lost profits damages for hypothetical United States sales of the NIR stent, and deny defendants' motion for leave to file an amended answer and counterclaim. An appropriate order shall issue.

ORDER

At Wilmington, this 15th day of August, 2001, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Plaintiffs' motion for summary judgment of literal infringement of the asserted claims of the '303 and '018 patents by the BX Velocity stent (D.I. 152) is denied.

2. Defendants' motion for summary judgment of non-infringement of claims 13 and 17 of the '120 patent [*17] by the Crown and Mini-Crown stents (D.I. 140) is denied.

3. Defendants' motion for summary judgment of non-infringement of the asserted claims of the Medinol patents by the BX Velocity stent (D.I. 146) is denied.

4. Plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by the '417 patent (D.I. 154) is granted.

5. Plaintiffs' motion for summary judgment that the asserted claims of the Medinol patents are not anticipated by the '373 patent (D.I. 148) is denied as moot.

6. Plaintiffs' motion for summary judgment that the stent designs in Figures 13, 14a and 14b of Application Serial No. 08/246,320 are not prior art (D.I. 150) is granted.

7. Defendants' motions for summary judgment precluding lost profits damages for hypothetical United States sales of the NIR stent (D.I. 142) and for leave to file an amended answer and counterclaim (D.I. 117) are denied.

United States District Judge

2000 U.S. Dist. LEXIS 4884, *

Time of Request: August 24, 2005 09:10 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

7 of 10 DOCUMENTS

CORDIS CORPORATION and EXPANDABLE GRAFTS PARTNERSHIP, Plaintiff, v. ADVANCED CARDIOVASCULAR SYSTEMS, INC.; GUIDANT CORPORATION; MEDTRONIC AVE, INC.; BOSTON SCIENTIFIC CORPORATION; and SCIMED LIFE SYSTEMS, INC., Defendants.

Civil Action No. 97-550-SLR (and Civil Action No. 98-65-SLR consolidated)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

2000 U.S. Dist. LEXIS 4884

March 31, 2000, Decided

NOTICE: [*1] FOR ELECTRONIC PUBLICATION ONLY

art references would have suggested the claimed invention by plaintiff corporations.

DISPOSITION: Motions for summary judgment of BSC and ACS denied.

LexisNexis(R) Headnotes

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant corporations moved for summary judgment in a patent validity action, contending that plaintiff corporations' patent was invalid under 36 U.S.C.S. § 103 for obviousness.

OVERVIEW: Plaintiff corporations characterized the invention of their patent as a pioneering invention and, thus, a valid patent in a patent validity action. Defendant corporations moved for summary judgment, claiming that plaintiffs' patent was invalid under 36 U.S.C.S. § 103 for obviousness. The court denied defendants' motions for summary judgment, holding that defendants failed to prove, by clear and convincing evidence, the invalidity of plaintiffs' patent based on obviousness under 36 U.S.C.S. § 103 because there were issues of fact regarding whether the combined teachings of the prior art references would have suggested the claimed invention by plaintiffs.

OUTCOME: Motions for summary judgment denied because defendant corporations failed to prove by clear and convincing evidence that there were issues of fact regarding whether the combined teachings of the prior

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

Patent Law > Nonobviousness > Elements & Tests > Claimed Invention as a Whole

[HN1] A patent is invalid under 35 U.S.C.S. § 103 if the differences between the claimed subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a hypothetical person of ordinary skill in the art at the time of the alleged invention. Knowledge of all the prior art references in the same or analogous fields by one of ordinary skill in the art is presumed.

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN2] The question of obviousness turns on four factual inquiries: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) proffered secondary considerations such as commercial success.

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN3] Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Facts are considered material only if they might affect the outcome of the suit. Thus, factual disputes that are irrelevant will not defeat a summary judgment. Likewise, issues are considered genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. If no reasonable jury could find in favor of the nonmovant, then summary judgment is appropriate.

Civil Procedure > Summary Judgment

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN4] When the inquiries related to the issue of obviousness do not lead to material issues of disputed fact, then summary judgment is appropriate. Where the ultimate legal conclusion of obviousness is disputed, but not the underlying facts, there is no issue of fact requiring a trial, even though some facts favor obviousness, some nonobviousness. Moreover, even disputes regarding secondary considerations will not prevent summary judgment when the secondary considerations do not carry sufficient weight to override a determination of obviousness based on primary considerations of prior art.

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

Patent Law > Infringement Actions > Defenses > General Overview

[HN5] A party challenging the validity of a patent has the burden to establish invalidity by clear and convincing evidence. In considering invalidity, the burden of proof under 35 U.S.C.S. § 282 is more easily carried when the offering prior art has not been before the Patent Office during the prosecution of the patent.

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN6] In comparing the differences between the invention at bar and the teachings of the prior art, the court is instructed to consider the problem solved by the inventor.

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

[HN7] Where the invention for which a patent is sought solves a problem which persisted in the art, we must look to the problem as well as to its solution if we are to properly appraise what was done and to evaluate it against what would be obvious to ones having ordinary skills of

the art. Moreover, the invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made.

Patent Law > Inequitable Conduct > Effect, Materiality & Scienter > General Overview

Patent Law > Nonobviousness > Evidence & Procedure > General Overview

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN8] It is well established that before a conclusion of obviousness may be made based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references. In determining whether the combined teachings of the prior art references would have suggested the claimed invention, the suggestion to combine need not be explicit within the reference.

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN9] Any obviousness analysis must take into account real world facts (also characterized as objective facts or secondary considerations), such as the existence of a long-felt need, failed attempts by others, initial skepticism by others, eventual praise and commercial success.

Civil Procedure > Summary Judgment

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN10] In the context of a summary judgment proceeding, evidence of commercial success can create genuine issues of material fact precluding the entry of summary judgment.

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JUDGES: Sue L. Robinson, District Judge.

OPINIONBY: Sue L. Robinson

OPINION:

MEMORANDUM OPINION

Dated: March 31, 2000

Wilmington, Delaware

Sue L. [*3] Robinson
District Judge

I. INTRODUCTION

Pending before the court are motions for summary judgment filed by defendants Boston Scientific Corporation and Scimed Life Systems, Inc. (collectively "BSC") and by defendants Advanced Cardiovascular Systems, Inc. and Guidant Corporation (collectively "ACS"). (D.I. 294, 309) At issue is the validity of U.S. Patent No. 5,102,417 (the " '417 patent"). Movants contend that the '417 patent is invalid under 36 U.S.C. § 103 for obviousness. Plaintiffs Cordis Corporation and Expandable Grafts Partnership (collectively "Cordis") argue to the contrary, characterizing the invention of the '417 patent as a pioneering invention. For the reasons that follow, the motions of BSC and ACS shall be denied.

II. BACKGROUND

The '417 patent issued in 1992 as a continuation-in-part to U.S. Patent Nos. 4,739,762 (the " '762 patent") and 4,733,665 (the " '665 patent"), both of which issued in 1988. All three of these patents are entitled "Expandable Intraluminal Graft, and Method and Apparatus for Implanting an Expandable Intraluminal Graft." As summarized in the '762 and '665 patents,

the invention relates to an [*4] expandable intraluminal graft for use within a body passageway or duct and, more particularly, expandable intraluminal vascular grafts which are particularly useful for repairing blood vessels narrowed or occluded by disease; and a method and apparatus for implanting expandable intraluminal grafts.

('665 patent, col. 1, lns. 11-17; '762 patent, col. 1, lns. 19-25) The specification of both patents describes the expandable intraluminal graft as follows:

In accordance with the invention the foregoing advantages have been achieved through the present expandable intraluminal vascular graft. The present invention includes a tubular shaped member having first and second ends and a wall surface disposed between the first and second ends, the wall surface being formed by a plurality of intersecting elongate members, at least some of the elongate members intersecting with one another intermediate the first and second ends of the tubular shaped member; the tubular shaped member having a first diameter which permits intraluminal delivery of the tubular shaped member into a

body passageway having a lumen; and the tubular shaped member having a second, expanded diameter, upon the application [*5] from the interior of the tubular shaped member of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular shaped member, whereby the tubular shaped member may be expanded to expand the lumen of the body passageway.

...

The expandable intraluminal vascular graft, method for expanding the lumen of a body passageway, and apparatus for intraluminally reinforcing a body passageway of the present invention, when compared with previously proposed prior art intraluminal grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevents recoil of the body passageway; and permits expansion of the graft to a variable size dependent upon conditions within the body passageway.

('665 patent, col. 3, lns. 20-39; col. 4, lns. 41-53; '762 patent, col. 3, lns. 32-51; col. 4, lns. 62-68; col. 5, lns. 1-7)

By the time the '417 patent application was filed in 1988, the inventors recognized that,

for repairing [*6] blood vessels narrowed or occluded by disease, or repairing other body passageways, the length of the body passageway which requires repair, as by the insertion of a tubular prosthetic graft, may present problems if the length of the required graft cannot negotiate the curves or bends of the body passageway through which the graft is passed by the catheter. In other words, in many instances it is necessary to support a length of tissue within a body passageway by a graft, wherein the length of the required graft exceeds the length of a graft which can be readily delivered via a catheter to the desired location within the vascular system.

Some grafts do not have the requisite ability to bend so as to negotiate the curves and bends present within the vascular system, particularly prostheses or grafts which are relatively rigid and resist bending with respect to their longitudinal axes.

('417 patent, col. 3, lns. 5-21) Consequently, the '417 patent, although mirroring the '665 and '762 patents, added

[a] further feature . . . that **at least one connector member** may be disposed in a non-parallel relationship with respect to the longitudinal axis of the tubular members. [*7] Another feature of the present invention is that . . . at least one connector member may be disposed coplanar with each tubular member and non-parallel to the longitudinal axis of the tubular members. An additional feature of the present invention is that at least one connector member may be a thin-walled, spiral member, coplanar with adjacent tubular members.

('417 patent, col. 4, lns. 8-18) (emphasis added). Accordingly,

the expandable intraluminal vascular graft, method for implanting a **plurality of prostheses** within a body passageway, and apparatus for intraluminally reinforcing a body passageway of the present invention, when compared with previously proposed prior art intraluminal grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevent recoil of the body passageway; prevents erosion of the body passageway by the expanded grafts; permits expansion of the graft to a variable size dependent upon conditions within the body passageway; permits tissue of [*8] an elongated section of a body passageway to be supported by an elongated graft; and **provides the necessary flexibility to negoti-**

ate the bends and curves in the vascular system.

('417 patent, col. 5, lns. 26-43) (emphasis added).

III. STANDARD OF REVIEW

[HN1] A patent is invalid under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the claimed subject matter as a whole would have been obvious to a hypothetical person of ordinary skill in the art at the time of the alleged invention. *Ryko Mfg Co. v. Nu-Star, Inc.* 950 F.2d 714, 717 (Fed. Cir. 1991). Knowledge of all the prior art references in the same or analogous fields by one of ordinary skill in the art is presumed. *In re Sernaker*, 702 F.2d 989, 994 (Fed. Cir. 1983).

[HN2] The question of obviousness turns on four factual inquiries: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) proffered secondary considerations such as commercial success. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966). [*9]

[HN3] Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Facts are considered material only if they might affect the outcome of the suit. Thus, factual disputes that are irrelevant will not defeat a summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). Likewise, issues are considered genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Id.* If no reasonable jury could find in favor of the nonmovant, then summary judgment is appropriate. *Id.*

Thus, [HN4] when the inquiries related to the issue of obviousness do not lead to material issues of disputed fact, then summary judgment is appropriate. *Union Carbide Corp. v. American Can Co.*, 724 F.2d 1567, 1571 (Fed. Cir. 1984). "Where the ultimate legal conclusion of obviousness is disputed, but not the underlying facts, there is no issue of fact requiring a trial, even though some facts favor obviousness, some [*10] nonobviousness." *Newell Companies, Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 763 (Fed. Cir. 1988). Moreover, even disputes regarding secondary considerations will not prevent summary judgment when the secondary considerations do not "carry sufficient weight to override a determina-

tion of obviousness based on primary considerations of prior art." *Ryko*, 950 F.2d at 719.

[HN5] A party challenging the validity of a patent has the burden to establish invalidity by clear and convincing evidence. In considering invalidity, the burden of proof under 35 U.S.C. § 282 is more easily carried when the offering prior art has not been before the Patent Office during the prosecution of the patent. *EWP Corp. v. Reliance Universal, Inc.*, 755 F.2d 898, 905 (Fed. Cir. 1985).

IV. DISCUSSION

A. Scope and Content of Prior n1 Art n2

N1 The '417 patent application was filed in March 1988; the patent issued in April 1992.

n2 The field of invention is that of "intraluminal endovascular grafting" presented as "a possible alternative to conventional vascular surgery." ('417 patent, col. 1, lns. 26-28)

[*11]

1. July 1985 Radiology: "Percutaneous, Endovascular Stents: An Experimental Evaluation," by Cesare Gianturco, M.D., et al.

The above article acknowledges that "in 1969, Dotter et al. reported on the experimental use of coiled, stainless steel, wire stents placed in the popliteal arteries of dogs. This was the first report of nonoperative, endarterial placement of wire stents." The article then describes "a new type of percutaneous, expanding, endovascular, stainless steel stent" "formed in a zig-zag pattern." The results of placing these stents in the vessels of dogs included the following observations:

They were easy to use and could be placed one inside of another or one after another. No distress was observed in any of the dogs during the study.

The expansile strength of the stents was found to be dependent on stent length, diameter of stent wire, the number and angle of bends in the wire of each stent, and the number of stents placed on [sic] inside another. Specifically, expansile force increased with decreased stent length, increased stent wire diameter, increased number of wire bends, larger angle formed by wire bends, and increased number of stents used. [*12]

* * * *

Multiple stents can be employed depending on the circumstance. If the area of interest is longer than one stent, several stents can be placed one after another with slight overlap at the ends. In addition, if the expansile strength of one stent is not sufficient, several stents can be placed one inside another to increase the dilating force at a specific point.

(D.I. 298, Ex. BB)

2. July 1985 Radiology: "Expandable Intraluminal Graft: A Preliminary Study," by Julio C. Palmaz, M.D., et al.

In addition to describing the relative advantages of the "Palmaz" expandable graft, the authors of this article specifically recognized that the graft as configured [woven mesh] "lacked longitudinal flexibility, which limited its use to straight arterial segments or, in the case of curved arteries, required the use of short graft lengths." Rather than using "excessively long graft[s]," the authors recommended "using shorter grafts or grafts in tandem." (D.I. 297, Ex. Q; see also D.I. 297, Ex. T)

3. U.S. Patent 4,580,568: "Percutaneous Endovascular Stent and Method of Insertion Thereof," issued April 8, 1986 to inventor Cesare Gianturco

The '568 patent generally [*13] describes an endovascular stent formed of stainless steel wire arranged in a "zig-zag" pattern. The patent specifically provides that "if desired and if necessary for the particular situation, [more than one stent] can be added and can be placed in the blood vessel Thus in FIG. 7, an additional two stents are located one longitudinally of [sic] the first stent in the blood vessel and the other overlapping the first stent" (D.I. 297, Ex. G at col. 3, lns. 19-24)

4. Radiology 1986: "Tracheobronchial Tree: Expandable Metallic Stents Used in Experimental and Clinical Applications," by Cesare Gianturco, M.D., et al.

The above article specifically describes zig-zag expandable stainless steel stents either used individually, "or two stents were connected by a wire strut and inserted together." (D.I. 297, Ex. H)

5. Radiology 1986: "Stenosis of the Vena Cava: Preliminary Assessment of Treatment with Expandable Metallic Stents," by Cesare Gianturco, M.D., et al.

The above article first acknowledges that "Palmaz et al. . . . developed a balloon-assisted expandable graft with a thin, stainless-steel wire mesh in the wall" The article goes on to describe [*14] the "Gianturco expandable metallic stent [as] constructed of a stainless steel wire bent in a zigzag pattern to form a cylinder." In connection with the animal experiments being reviewed, the article states that "for a long stenosis, two stents of similar length were connected by wire struts They provided a greater expansile force than a single long stent and better stabilization." (D.I. 297, Ex. I)

6. Radiology 1987: "Experimental Intrahepatic Portacaval Anastomosis: Use of Expandable Gianturco Stents," by Joseph Rosch, M.D., et al.

The above article acknowledges that "Palmaz et al. successfully created a long-term functioning EIPCA [experimental intrahepatic portacaval anastomosis] with their design of an expandable mesh stent, originally made of stainless steel woven wire, now obtained from thin-walled stainless steel tubing by electromagnetic etching" The article observes that the authors' "experimental work documents that the Gianturco stents made from stainless steel wire in a zigzag pattern are also well suited for EIPCA. These stents are versatile: They can be made in various sizes, diameters, lengths, and degrees of expansile force and can be connected [*15] together depending on the anatomic needs." (D.I. 297, Ex. K)

7. 1987 Annual Course on "Diagnostic Angiography and Interventional Radiology": "Gianturco Expandable Stents in Experimental and Clinical Use," by Josef Rosch, M.D., et al.

The above article discusses "Gianturco expandable stents." According to the authors, "stent length is selected depending on the lesion to be stented. In longer lesions, two or more 2 cm long stents are connected by a wire strut or monofilament line to form a stent combination. . . ." (D.I. 297, Ex. L)

8. The '655 and '762 patents.

Cordis has conceded that the basic slotted tube graft disclosed in the '665 and '762 patents is prior art to the '417 patent. (D.I. 151 at 52-53) The '665 patent application was filed in November 1985; the patent issued in March 1988. The '762 patent application was filed in November 1986; the patent issued in April 1988. Without repeating the exercise performed by ACS (D.I. 310 at 11-14), claims 1 and 17 of the '417 are virtually the same as claims 1 and 7 of the '655 patent but for language in the '417 patent describing the use of a "plurality of" "prosthesis" or "grafts" "flexibly connected" to each other by [*16] disposing "at least one connector member . . . between the adjacent" "prostheses" or "grafts." Like-

wise, claim 25 of the '417 patent and claim 13 of the '762 patent are nearly identical but for language in the '417 patent describing a "plurality of thin-walled tubular members" "flexibly connected" to each other by "disposing" "at least one connector member" "between adjacent tubular members."

9. U.S. Patent No. 4,800,822: "Endovascular Stent and Delivery System," issued January 31, 1989 to Cesare Gianturco, M.D.

The '882 patent describes a "stent comprising a wire formed into a serpentine configuration . . . formed into a cylindrical shape having a longitudinal axis. . . ." (D.I. 330, Ex. N at col. 2, lns. 308) In characterizing the prior art, including Gianturco's own "Z stent," the patent represents that "less complex wire stents lack the axial compliance to pass through a catheter that has any significant curves or bends." (D.I. 330, Ex. N at col. 1, lns. 62-64)

B. Level of Ordinary Skill in the Art

Consistent with the description proffered by ACS and Cordis, n3 at least for purposes of these summary judgment proceedings, the court concludes that the level of ordinary [*17] skill in the art would be a medical doctor working with an engineer having a degree in mechanical or chemical engineering and five years of experience or such a degree engineer working with a medical doctor. (D.I. 310 at 9; D.I. 329 at 19)

n3 BSC argues that the level of ordinary skill in the art should reflect the knowledge and level of skill of the "highly qualified investigators working with stents," all of whom were physicians from varying disciplines. (D.I. 295 at 16-17) The court finds this description encompasses those with "extraordinary skill in the art" and, therefore, is not warranted. (D.I. 329 at 19)

C. Differences Between the Prior Art and the Invention

[HN6] In comparing the differences between the invention at bar and the teachings of the prior art, the court is instructed to consider "the problem solved by the inventor." *In re Newell*, 891 F.2d 899, 902 (Fed. Cir. 1989).

[HN7]

Where the invention for which a patent is sought solves a problem which persisted in the art, we [*18] must look to the problem as well as to its solution if we are to properly appraise what was done and to

evaluate it against what would be obvious to ones having ordinary skills of the art.

Id., quoting *In re Rothermel*, 47 C.C.P.A. 866, 276 F.2d 393, 397 (Fed. Cir. 1960). Moreover,

the invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made.

Sensonics, Inc. v. Aerosonic Corp., 81 F.3d 1566, 1570 (Fed. Cir. 1996).

[HN8] It is well established that before a conclusion of obviousness may be made based on a combination of references, "there must have been a reason, suggestion, or motivation to lead an inventor to combine those references." *Pro-Mold & Tool, Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573 (Fed. Cir. 1996). In determining whether the combined teachings of the prior art references would have suggested the claimed invention, the suggestion to combine need not be explicit within the reference. See, *B.F. Goodrich Co. v. Aircraft Braking Sys. Corp.*, 72 F.3d 1577, 1582 (Fed. Cir. 1996). [*19]

Having reviewed the prior art references of record, the court cannot say with conviction n4 that the references would have led one of ordinary skill in the art to the invention in suit. Aside from the passing reference by Dr. Palmaz that his woven mesh configuration lacked longitudinal flexibility, n5 it is apparent that in 1985-1988, the focus of those in the field of invention was on the performance of the stent in place, not on the ease of delivery. To put the point differently, the purpose of multiple stents (connected or not) was characterized in the prior art as two-fold: to support longer lesions and to increase the expansile force and stability of self-expanding stents. There is no clear evidence that the problem of longitudinal flexibility was identified, let alone solved, by the prior art. Consequently, the fact that connecting multiple stents is part of the prior art does not lead inexorably, in and of itself, to the conclusion that the invention of the '417 patent is obvious, where the prior art was neither addressing nor solving the same problem as the invention in suit. n6 The court concludes, therefore, that there are genuine issues of material fact as to whether there [*20] was "reason, suggestion or motivation" to combine the references cited. *Id.*

n4 I.e., defendants have not presented clear and convincing evidence.

n5 A problem solved by the use of shorter grafts or grafts in tandem.

n6 The court previously found that the wire struts connecting the Gianturco "Z" stents did not provide flexibility.

D. Secondary Considerations

[HN9] Any obviousness analysis must take into account "real world facts" (also characterized as "objective facts" or "secondary considerations"), such as the existence of a long-felt need, failed attempts by others, initial skepticism by others, eventual praise and commercial success. *Rosemount, Inc. v. Beckman Instruments, Inc.*, 727 F.2d 1540, 1546 (Fed. Cir. 1984). [HN10] In the context of a summary judgment proceeding, evidence of commercial success can create genuine issues of material fact precluding the entry of summary judgment. See, *Pro-Mold & Tool Co.*, 75 F.3d at 1573.

Cordis argues in this regard that all [*21] of the factors generally considered under the rubric of "secondary considerations" weigh in favor of Cordis, thus precluding the entry of summary judgment. In support of its contentions, Cordis generally recites facts relating to the history of the slotted tube stent (the invention of the '655 and

'762 patents), not the claimed invention of the '417 patent, that of flexibly connecting multiple slotted tube stents.

Having attempted to isolate the invention of the '417 patent from that of the '665/'762 patents in terms of obviousness, it is hardly compelling to now view the '417 patent in the broader context of the struggle for validation of the Palmaz-Schatz slotted tube stent. The court has determined that the problem solved by the '417 patent was not one particularly recognized in the prior art; consequently, others in the field apparently were not attempting to address the problem. However, given the court's recollection that the preferred embodiment of the '417 patent was more successful commercially than the single slotted tube configuration of the '665/'762 patents, and the evidence of record that the "so-called second-generation stents 'owe their design to the Palmaz-Schatz [*22] design'" (D.I. 330, Ex. J), the court concludes that there are genuine issues of material fact that preclude the entry of summary judgment.

V. CONCLUSION

For the reasons stated, the court concludes that defendants have failed to prove, by clear and convincing evidence, the invalidity of the '417 patent based on obviousness.

An order shall issue.

1999 U.S. Dist. LEXIS 9877, *

Time of Request: August 24, 2005 09:11 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

8 of 10 DOCUMENTS

CORDIS CORPORATION and EXPANDABLE GRAFTS PARTNERSHIP, Plaintiffs, v. ADVANCED CARDIOVASCULAR SYSTEMS, INC.; GUIDANT CORPORATION; ARTERIAL VASCULAR ENGINEERING, INC.; BOSTON SCIENTIFIC CORPORATION; and SCIMED LIFE SYSTEMS, INC., Defendants. ARTERIAL VASCULAR ENGINEERING, INC., Plaintiff, v. CORDIS CORPORATION, JOHNSON & JOHNSON, and EXPANDABLE GRAFTS PARTNERSHIP, Defendants.

Civil Action No. 97-550-SLR (Consolidated) Civil Action No. 97-700-SLR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

1999 U.S. Dist. LEXIS 9877

June 18, 1999, Decided

DISPOSITION: [*1] Cordis' motion for summary judgment denied, ACS' motion for summary judgment granted in part and denied in part, and AVE's motion for summary judgment granted in part and denied in part.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff patentee and defendants, medical companies and engineering company, filed motions for summary judgment in plaintiff's action for patent infringement of their single expandable intraluminal graft, and method and apparatus for implanting it.

OVERVIEW: The court denied plaintiff patentee's motion for summary judgment as to defendant medical companies, with respect to literal infringement of the single expandable intraluminal graft. Plaintiff had not established that every limitation set forth in its patent was found in one defendant medical company's multi-link stent. It was inappropriate to analytically disassemble the whole into some unknown combination of discrete parts in order to find literal infringement. Accordingly, one defendant medical company's motion for summary judgment as to literal infringement was granted. The court denied both plaintiff's and second defendant medical company's motion for summary judgment on the issue of the doctrine of equivalents, and

on other claims allegedly infringed by second defendant medical company's device. The court granted defendant engineering company's motion as to literal infringement, because its stent was not comprised of tubular members having a plurality of slots formed in the wall surface of each tubular member. But the court denied defendant engineering company's motion on the doctrine of equivalents and its motion with respect to its connector member limitation.

OUTCOME: The court denied plaintiff patentee's motion with respect to one defendant medical company's stent, because plaintiff had not shown that the stent included every one of plaintiff's limitations. One defendant medical company's motion was granted as to literal infringement. The court granted second defendant medical company's motion as to literal infringement, but denied all motions for summary judgment with respect to the doctrine of equivalents.

LexisNexis(R) Headnotes***Civil Procedure > Summary Judgment > Summary Judgment Standard***

[HN1] Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Facts are considered material only if they might affect the outcome of the suit.

Factual disputes that are irrelevant will not defeat a summary judgment. Likewise, issues are considered genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. If no reasonable jury could find in favor of the non-movant, summary judgment is appropriate.

Patent Law > Infringement Actions > Summary Judgment > General Overview

[HN2] Summary judgment is appropriate for non-infringement of a patent. Non-infringement need only be established by a preponderance of the evidence.

Patent Law > Infringement Actions > Summary Judgment > General Overview

[HN3] Literal infringement involves a two-step determination: the proper construction of the asserted claims and a determination whether the claims as properly construed read on the accused product or method. To establish infringement of a patent, every limitation set forth in a claim must be found in an accused product or process exactly or by a substantial equivalent. An accused infringer is entitled to summary judgment, on the ground of non-infringement, by pointing out that the patentee failed to put forth evidence to support a finding that a limitation of the asserted claim was met by the structure in the accused devices. Where there is no dispute regarding the structure of the accused device, the infringement issue collapses to one of claim construction and is thus amenable to summary judgment.

Patent Law > Infringement Actions > Doctrine of Equivalents > Elements > General Overview

[HN4] Even if a product does not literally infringe, infringement may nonetheless be found under the doctrine of equivalents if there is equivalence between the elements of the claim and of the accused product. The doctrine of equivalents is intended to prevent someone from making unimportant and insubstantial changes or substitutions to the patented device. The test for equivalents must be applied to the individual elements of the claim, not to the invention as a whole. The analysis under the doctrine is whether the element in the accused device performs substantially the same function, in substantially the same way, to achieve substantially the same result as the claimed element.

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JUDGES: Sue L. Robinson, District Judge.

OPINIONBY: Sue [*3] L. Robinson

OPINION:

MEMORANDUM OPINION

Dated: June 18, 1999
Wilmington, Delaware

Sue L. Robinson
District Judge

INTRODUCTION

Before the court are multiple motions, only some of which are addressed in the memorandum opinion that follows. n1 Plaintiff Cordis Corporation ("Cordis") has moved for entry of a summary judgment of infringement of U.S. Patent No. 5,102,417 (the " '417 patent") by defendant ACS. (D.I. 303) n2 ACS and its parent, Guidant Corporation, have moved for entry of a summary judgment of non-infringement of the '417 patent. n3 (D.I. 306) Defendant Arterial Vascular Engineering, Inc. ("AVE") has moved for entry of a summary judgment of non-infringement on all patents-in suit, which include U.S. Patent No. 4,739,762 (the " '762 patent") and U.S. Patent No. 5,195,984 (the " '984 patent"), as well as the '417 patent. (D.I. 299)

n1 The motions filed by defendants Advanced Cardiovascular Systems, Inc. ("ACS") (D.I. 309) and by defendants Boston Scientific Corporation and Scimed Life Systems, Inc. (D.I. 294) for entry of a summary judgment of invalidity of the '417 patent will be addressed separately.

[*4]

n2 All docket item references are to C.A. No. 97-550-SLR.

n3 At this point in the litigation, ACS' parent, Guidant Corporation, is still a defendant. The two corporations shall be collectively referred to as "ACS."

BACKGROUND

As noted above, the patents-in-suit are the '762, the '417, and the '984 patents. n4 The '762 patent is a continuation-in-part ("CIP") of U.S. Patent No. 4,733,665 ("the '665 patent") and the '417 patent is a CIP of the '762 patent. The '417 and '984 patents have substantially similar disclosures. The '762 patent, filed on November 3, 1986, discloses a single expandable intraluminal graft, and a method and apparatus for implanting it. As summarized in the '762 patent,

the invention relates to an expandable intraluminal graft for use within a body passageway or duct and, more particularly, expandable intraluminal vascular grafts which are particularly useful for repairing blood vessels narrowed or occluded by disease; and a method and apparatus for implanting expandable intraluminal grafts.

('762 patent, col. 1, lns. 19-25) The specification [*5] of the '762 patent describes the expandable intraluminal graft as follows:

The present invention includes a **thin-walled tubular member** having first and second ends and a wall surface disposed between the first and second ends, the wall[']s surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of the tubular member; the tubular shaped member having a first diameter which permits intraluminal delivery of the thin-walled tubular member into a body passageway having a lumen; and the tubular member having a second, expanded diameter, upon the application from the interior of the tubular member of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular member, whereby the tubular shaped member may be expanded and deformed to expand the lumen of the body passageway.

* * * *

The method of the present invention comprises the steps of: **utilizing a thin-walled, tubular member as the prosthesis**, the tubular member having a plurality of slots formed therein, the slots being disposed [*6] substantially parallel to the longitudinal axis of the tubular member . .

* * * *

The expandable intraluminal vascular graft, method for implanting a prosthesis

within a body passageway, and apparatus for intraluminally reinforcing a body passageway of the present invention, when compared with previously proposed prior art intraluminal grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevents recoil of the body passageway; prevents erosion of the body passageway by the expanded graft; and permits expansion of the graft to a variable size dependent upon conditions within the body passageway.

('762 patent, col. 3, lns. 34-51; col. 4, lns. 6-11, 62-68 and col. 5, lns. 1-7)(emphasis added).

n4 All the patents-in-suit are reproduced in D.I. 301, Exs. 1-4.

When the '417 patent application was filed [*7] in 1988, an additional problem was addressed.

For repairing blood vessels narrowed or occluded by disease, or repairing other body passageways, the length of the body passageway which requires repair, as by the insertion of a tubular prosthetic graft, may present problems if the length of the required graft cannot negotiate the curves or bends of the body passageway through which the graft is passed by the catheter. In other words, in many instances, it is necessary to support a length of tissue within a body passageway by a graft, wherein the length of the required graft exceeds the length of a graft which can be readily delivered via a catheter to the desired location within the vascular system. Some grafts do not have the requisite ability to bend so as to negotiate the curves and bends present within the vascular system, particularly prostheses or grafts which are relatively rigid and resist bending with respect to their longitudinal axes.

('417 patent, col. 3, lns. 5-21; '984 patent, col. 2, lns. 63-68 and col. 3, lns. 1-11) Consequently, the '417 patent, although mirroring the '762 patent, added

[a] further feature . . . that at least one **connector [*8] member** may be disposed in a non-parallel relationship with respect to the longitudinal axis of the **tubular members**. Another feature of the present invention is that . . . at least one connector member may be disposed coplanar with each tubular member and non-parallel to the longitudinal axis of the tubular members. An additional feature of the present invention is that at least one connector member may be a thin-walled, spiral member, coplanar with adjacent tubular members.

('417 patent, col. 4, lns. 8-18)(emphasis added).

The '984 patent, filed in 1991, substituted the following feature for that recited above, that there be a

single connector member [which] may be a thin-walled, elongate bar member, **coplanar with adjacent tubular members**. An additional feature of the present invention is that a first connector member may be disposed between the second end of a first tubular member and the first end of a second tubular member; a second connector member may be disposed between the second end of the second tubular member and the first end of a third tubular member; the first and second connector members being angularly offset from one another with [*9] respect to the longitudinal axis of the tubular members.

('984 patent, col. 3, ln. 68 and col. 4, lns. 1-10)(emphasis added).

The disclosure by the '417 and '984 patents of "connector members" added to the invention's advantages by

permitting tissue of an elongated section of a body passageway to be supported by an elongated graft; and providing the necessary flexibility to negotiate the bends

and curves in tortuous body passageways, such as the vascular system.

('984 patent, col. 4, lns. 20-25; '417 patent, col. 5, lns. 39-43)

STANDARD OF REVIEW

[HN1] Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Facts are considered material only if they might affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). Factual disputes that are irrelevant will not defeat a summary judgment. *Id.* Likewise, issues are considered genuine only if the evidence is such that a reasonable jury could return a verdict for the [*10] non-moving party. *Id.* If no reasonable jury could find in favor of the non-movant, summary judgment is appropriate. *Id.* at 249.

[HN2] Summary judgment is appropriate for non-infringement of a patent. *Brenner v. United States*, 773 F.2d 306, 307 (Fed. Cir. 1985) (affirming summary judgment of non-infringement). Non-infringement need only be established by a preponderance of the evidence. *S. Bravo Sys., Inc. v. Containment Techs. Corp.*, 96 F.3d 1372, 1376 (Fed. Cir. 1996).

[HN3] Literal infringement involves a two-step determination: the proper construction of the asserted claims and a determination whether the claims as properly construed read on the accused product or method. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996). To establish infringement of a patent, every limitation set forth in a claim must be found in an accused product or process exactly or by a substantial equivalent. *Johnston v. IVAC Corp.*, 885 F.2d 1574, 1577 (Fed. Cir. 1989). An accused infringer "is entitled to summary judgment, on the ground of non-infringement, by pointing out that the patentee [*11] failed to put forth evidence to support a finding that a limitation of the asserted claim was met by the structure in the accused devices." *Id.* at 1578. Where there is no dispute regarding the structure of the accused device, the infringement issue "collapses to one of claim construction and is thus amenable to summary judgment." *Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1578 (Fed. Cir. 1996).

N5 The claim construction, issued separately, is meant to impart a consistent interpreta-

tion of common language used in the patents-in-suit, taking into account the specific language chosen by the patentees and the evolution of the invention as reflected in the specifications.

[HN4] Even if a product does not literally infringe, infringement may nonetheless be found under the doctrine of equivalents if there is equivalence between the elements of the claim and of the accused product. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 21, 137 L. Ed. 2d 146, 117 S. Ct. 1040 (1997). The [*12] doctrine of equivalents is intended to prevent someone from making unimportant and insubstantial changes or substitutions to the patented device. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 607, 94 L. Ed. 1097, 70 S. Ct. 854 (1950). The test for equivalents must be applied to the individual elements of the claim, not to the invention as a whole. *Hilton Davis*, 520 U.S. at 29. The analysis under the doctrine is whether the element in the accused device performs substantially the same function, in substantially the same way, to achieve substantially the same result as the claimed element.

ANALYSIS OF ACS AND CORDIS CROSS MOTIONS

The Claims Asserted Against ACS

Cordis has asserted claims 1-3, 9, 11-14, 17, 22, 25, and 29 of the '417 patent against ACS, and presently moves for summary judgment on claim 25. ACS has moved for summary judgment of non-infringement on all asserted claims of the '417 patent. For purposes of the court's analysis, the claims will be grouped as follows: (1) those claims directed to connecting a plurality of "prostheses," which include independent claim 1 and dependent claims 2-3, 9, 11-14, and those claims directed to connecting [*13] a plurality of "intraluminal grafts," which include independent claim 17 and dependent claim 22; and (2) those claims directed to connecting a plurality of "tubular members," which include independent claims 25 and 29. Independent claims 1, 17, 25, and 29 are reproduced below. Claim 1 reads:

A method for implanting a plurality of prostheses within a body passageway comprising the steps of:

disposing at least one connector member between adjacent prostheses to flexibly connect adjacent prostheses to each other;

disposing the plurality of connected prostheses upon a catheter;
 inserting the prostheses and catheter within the body passageway by catheterization of said body passageway; and
 providing controllable expansion of at least one of the prostheses at a desired location within the body passageway by expanding a portion of the catheter associated with the prostheses to force at least one of the prostheses radially outwardly into contact with the body passageway, by deforming a portion of the at least one prosthesis with a force in excess of the elastic limit of the portion of the at least one prosthesis,

to implant the prostheses within the body passageway.

('417 [*14] patent, col. 13, lns. 20-40) Claim 17 reads:

A method for expanding the lumen of a body passageway comprising the steps of:

connecting a plurality of intraluminal grafts by at least one flexible connector member disposed between adjacent grafts;
 inserting the plurality of connected intraluminal grafts, disposed upon a catheter, into the body passageway until the grafts are disposed adjacent a desired location within the body passageway; and
 expanding a portion of the catheter to provide controllable expansion of the intraluminal grafts radially, outwardly into contact with

the body passageway, by deforming a portion of the intraluminal grafts with a force in excess of the elastic limit of the portion of the intraluminal grafts, until the lumen of the body passageway at the desired location in the body passageway has been expanded, whereby the intraluminal grafts prevent the body passageway from collapsing and decreasing the size of the expanded lumen, and the intraluminal grafts remain in the passageway.

('417 patent, col. 14, lns. 39-59) Claim 25 reads:

An expandable intraluminal vascular graft, comprising:

a plurality of thin-walled tubular members, each [*15] having first and second ends and a wall surface disposed between the first and second ends, the wall surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of each tubular member;
 at least one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members;
 each tubular member having a first diameter which permits intraluminal delivery of the tubular members into a body passageway having a lumen; and
 the tubular members having a second, expanded and deformed diameter, upon the application from the in-

terior of the tubular members of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular members, whereby the tubular members may be expanded and deformed to expand the lumen of the body passageway.

('417 patent, col. 15, lns. 19-40) Claim 29 reads:

An expandable prosthesis for a body passageway, comprising:

a plurality of thin-walled tubular members, each having first and second ends and a wall surface disposed between the first and second [*16] ends, the wall surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of each tubular member;
at least one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members;
each tubular member having a first diameter which permits intraluminal delivery of the tubular members into a body passageway having a lumen; and
the tubular members having a second, expanded and deformed diameter, upon the application from the interior of the tubular members, of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force

applied to the tubular member, whereby the tubular member may be expanded and deformed to expand the lumen of the body passageway.

('417 patent, col. 15, lns. 52-68; col. 16, lns. 1-6)

The ACS Multi-Link Stent

The following description of the accused product is taken from the court's earlier memorandum opinion denying Cordis' motion for preliminary relief and is based on the evidence presented in connection with said preliminary proceedings.

The ACS Multi-Link [*17] stent is described in ACS literature as comprised of "12 rings linked by 33 articulations for flexibility" (PX 38); "a small latticed stainless steel tube" (PX 52-A); "cut from a tube for optimal radial strength [and having] 33 links for flexibility and conformability" (PX 63). The ACS Multi-Link stent is the commercial embodiment of U.S. Patent No. 5,421,955 (the " '955 patent"), which describes the stent of the invention as generally including

a plurality of radially expandable cylindrical elements which are relatively independent in their ability to expand and to flex relative to one another. The individual radially expandable cylindrical elements of the stent are dimensioned so as to be longitudinally shorter than their own diameters. Interconnecting elements or struts extending between adjacent cylindrical elements provide increased stability and are preferably positioned to prevent warping of the stent upon the expansion thereof. The resulting stent structure is a series of radially expandable cylindrical elements which are spaced longitudinally close enough so that small dissections in the wall of a body lumen may be pressed back into position against the luminal wall, [*18] but not so close as to compromise the longitudinal flexibility of the stent. The individual cylindrical elements may rotate slightly relative to adjacent cylindrical elements without significant deformation, cumulatively giving a stent which is flexible along its length and about its longitudinal axis but which is

still very stiff in the radial direction in order to resist collapse.

(PX 46: '955 patent, col. 1, lns. 59-68; col. 2, lns. 1-12) Beverly Huss, Vice President of ACS' Business Unit, testified that the ACS Multi-Link stent is composed of 12 rings. Each ring is approximately 1.2 millimeters in length, with an expanded diameter that varies from a minimum of approximately 2.5 millimeters up to 4 millimeters. (D.I. 349 at 57) Adjacent rings are connected longitudinally by three links that are 120 degrees apart. Each ring is a "metal strut" defined by "W's and U's," "the center portion of the 'W' representing the link to the next adjacent ring." (D.I. 169 at 1077-78)

Independent Claims 1 and 17 - Literal Infringement

As recognized by the court, the words "prostheses" and "grafts" are used interchangeably in the '417 patent. ('417 patent, col. 6, lns. 22-33) Therefore, [*19] independent claims 1 and 17 both require that "a plurality of prostheses" or "a plurality of intraluminal grafts" be "flexibly connected" by "at least one connector member. . . ." (claim 1) or connected "by at least one flexible connector member. . . ." (claim 17). Consistent with the court's claim construction, both prostheses and grafts have to function; i.e., once either a graft or a prosthesis is "expanded and deformed," it must be capable of "serving to prevent a body passageway from collapsing" ('417 patent, col. 8, lns. 60-63) n6

n6 Cordis argues that "the performance characteristic of individual, unconnected grafts [is] not part of the claimed method. . . ." (D.I. 324 at 20) Contrary to Cordis' position, there is nothing in the specification or claim language of the '417 patent to indicate that a "graft" or "prosthesis" can be nonfunctional. Indeed, common sense dictates that a "graft" which does not function as a "graft" cannot be described accurately as a "graft," i.e., its very nomenclature is self-limiting.

[*20]

Having concluded that "grafts" and "prostheses" must be functional, the question remains whether Cordis is legally entitled to characterize discrete components of the ACS Multi-Link stent as a "graft," even though such discrete components are not characterized, produced, marketed, or sold as such by ACS. n7 The court understands that each ACS Multi-Link stent is manufactured as a whole from a hollow tube. (D.I. 300 at 25) Under these circumstances, n8 the court concludes that it is not appropriate to analytically disassemble the whole into

some unknown combination of discrete parts in order to find literal infringement. Therefore, defendant ACS' motion for summary judgment as to this issue shall be granted, and plaintiff's motion shall be denied.

n7 According to Cordis' reasoning, one ring or any combination of rings (e.g., two-, three-, four-, or six-ring groupings) could conceivably be viewed as constituting a "graft." (See, e.g., D.I. 324 at 23)

n8 As opposed to where a stent is made up of discrete parts and put together in various combinations, as with the AVE stents.

[*21]

Independent Claims 1 and 17 - Doctrine of Equivalents

Cordis has argued that "the Multi-Link's rings - whether viewed singly or in groups of six rings - serve substantially the same purpose as elongated tubular members and function in substantially the same way to achieve substantially the same result." (D.I. 324 at 16) There is conflicting evidence of record as to whether this proposition is true. ACS asserts that 1-2 millimeter rings migrate and lack the mechanical stability to maintain coaxial alignment in the vessel; if so, rings of this size cannot function as grafts or prostheses. (D.I. 167 at 1169; API 68) Cordis proffers evidence to the contrary, that "stents can range from one millimeter to two centimeters in length." (D.I. 324 at 15, citing U.S. Patent No. 5,292,331, col. 5, lns. 28-30) Given this genuine issue of material fact, the court declines to grant either party's motion for summary judgment on the issue of infringement by equivalents.

Independent Claims 25 and 29 - Literal Infringement

Independent claims 25 and 29 of the '417 patent describe the "expandable intraluminal vascular graft" of claim 25 and the "expandable prosthesis" of claim 29 as being [*22] comprised of at least two "thin-walled tubular members." The court has construed the term "tubular member" to be, inter alia, a hollow, elongated cylindrical structure with multiple openings formed in its wall surface; the openings likewise must be elongated. n9

n9 Cordis argues that the description of "elongated members" in dependent claims 11 and 12 demonstrates that the "tubular members" need not be elongated. (C.A. No. 97-550, D.I. 324 at 8) Following the principles of claim differentiation as argued by Cordis would require the court to

ignore the definitions of "tubular" and of "slot," the evidence cited by the court in its claim construction analysis, and common sense. This the court declines to do.

The court, at the preliminary injunction stage, accepted Cordis' contention that each ring of the ACS Multi-Link stent was a thin-walled tubular member flexibly connected to adjacent tubular members. Although the court's claim construction has been revised to some extent, nevertheless, the court concludes [*23] that there are genuine issues of material fact as to whether the Multi-Link's rings are long enough to qualify as tubular members, either literally or by equivalents. Therefore, both parties' motions for summary judgment as to these issues shall be denied.

ANALYSIS OF AVE'S MOTION

AVE has moved for summary judgment on all claims asserted against it by Cordis. Specifically, AVE moves for summary judgment on: 1) claims 1-43 of the '762 patent on the ground that its stents lack the "tubular slotted" limitation; 2) claims 1-36 of the '417 patent on the ground that its stents lack the "connector member" limitation; 3) claims 7, 5-16, 20, 23-24, 27-28, and 31-32 of the '417 patent on the ground that its stents lack the coplanar limitation; 4) claims 9-16 and 22-36 of the '417 patent on the ground that its stents lack the "tubular slotted" limitation; and 5) claims 1-6 of the '984 patent, on the ground that its stents lack the "connector member," "coplanar," and "tubular slotted" limitations. (D.I. 300 at 2)

Description of the AVE Stents n10

n10 The AVE stents at issue are sold with AVE's Micro Stent(R) II ("MSII") and GFX(R) ("GFX") stent delivery systems. For purposes of the pending motions, the differences between these stents are not significant, and both stents will be referred to collectively as the "AVE stents." (D.I. 300 at 6; D.I. 327, P 4)

[*24]

The following description of the AVE stents is taken from the declaration of Matthew J. Birdsall, an engineer currently employed by AVE. (D.I. 296, P 2)

The AVE stents consist of multiple sinusoidal stent elements fused together to form a continuously connected device. The individual AVE stent elements are made from a torus, a circular-shaped object (similar to the inner tube of a bicycle) that has a circular cross-sectional shape. These tori are referred to as "rings" at

AVE. After undergoing a heating process, the rings are bent from their normal configuration into a design characterized by a series of peaks and valleys called "crowns."

Upon completion of the bending process, each stent element essentially has its final sinusoidal shape. The sinusoidal shaped stent element (sometimes referred to as a segment) includes a series of curved portions (sometimes referred to as crowns or peaks and valleys) interconnected by substantially straight portions (sometimes referred to as struts).

The stent elements used in the MSII stent delivery system have four upper and lower crowns and a length of 3 mm each, while the stent elements in the GFX stent delivery system have six upper and lower [*25] crowns and are 2 mm in length. AVE's stents come in a wide variety of sizes and lengths, which are created by connecting a number of individual 3 mm MSII or 2 mm GFX stent elements together.

To connect the stent elements, they are positioned end to end so that adjacent crowns are in contact with each other. One pair of adjacent crowns is then fused together to form a rigid joint, using AVE's proprietary autogenous laser fusion process. This process is different from a traditional welding process in that no additional material is added to the stent. Instead, existing material from two adjacent crowns is melted and fused together. According to AVE, the sole purpose of the weld is to rigidly connect the flexible stent elements together. There is only one weld between adjacent stent elements, and the stent elements are fused together in a helical manner.

After the autogenous laser fusion process is complete, the distance between the adjacent crowns to be fused together decreases. Although it is still possible to identify (with high magnification techniques) the welded region, there are no discrete sides, facets, faces, or other recognizable geometric features to the welded joints, which [*26] have a generally hourglass shape. (D.I. 296 at 3-9)

Tubular Slotted Limitation - Literal Infringement

Consistent with the court's revised claim construction, the AVE stents are not comprised of tubular members having a plurality of slots formed in the wall surface of each tubular member. Therefore, there is no literal infringement of claims 1-43 of the '762 patent, 9-16 and 22-36 of the '417 patent and claims 1-6 of the '984 patent.

Tubular Slotted Limitation - Doctrine of Equivalents

AVE argues that Cordis is precluded from applying the doctrine of equivalents to the accused AVE stents "because required elements are wholly absent from the AVE stents. There is no preexisting structure and no slots formed therein . . ." (D.I. 300 at 24) Cordis argues that the "AVE slotted tube stent infringes under the doctrine of equivalents because it performs substantially the same function, in substantially the same way, to achieve substantially the same result as the inventive stent." (D.I. 323 at 27)

The analysis to be undertaken in determining equivalence is on an element-by-element basis. The fact that identical elements are absent from the AVE stents does not rule out the [*27] presence of equivalent elements. Given the number of claims at issue and the record before the court, the court declines to grant AVE's motion for summary judgment on this issue.

Connector Member Limitation - Literal Infringement

AVE contends that there is no literal infringement of the connector member limitations of the '417 and '984 patents. As previously construed by the court, a "connector member" is a discrete n11 structure disposed or particularly arranged between adjacent grafts, prostheses, or tubular members in order to join them together. AVE urges the court to consider a further limitation to this definition based on the functions ascribed to the connector members by the specifications. Specifically, AVE argues that the connector members must be "elongate" structures.

n11 "Discrete" has several possible meanings, including "possessed of definite identity or individuality; constituting a separate entity;" "consisting of distinct, unconnected, or unrelated parts; noncontinuous;" "individually distinct but not generally different." Webster's at 647. Of these, the latter is not inconsistent with the concept and function of a "connector member."

[*28]

In support of this argument, AVE cites to the description of the connector member in the '984 patent:

The cross-sectional configuration of connector members 100, along the longitudinal axis of graft, or prosthesis, 70', is the same, in that connector members 100 have the same uniform wall thickness of elongate members 75 and thus form a thin-walled, elongate bar member 101

which is coplanar with adjacent tubular members 71.

('984 patent, col. 10, Ins. 36-41) (emphasis added) n12 AVE also cites to those portions of the specifications which describe the characteristics of the connector members as they perform their primary function, to flexibly connect adjacent structures:

Still with reference to FIGS. 7-8, connector members 100 are preferably **disposed in a non-parallel relationship** with respect to the longitudinal axis of adjacent grafts, or prostheses, 70. Further, it is preferable that the at least one connector member 100 is formed as a thin-walled spiral member 102 which is coplanar with the outer wall surface 74 of the adjacent tubular members 71, or adjacent grafts, or prostheses, 70.

* * *

As seen in FIG. 9, because of the disposition of [*29] flexible connector members 100 between adjacent tubular members 71, or grafts, or prostheses, 70, graft, or prosthesis, 70' is able to flexibly bend, or articulate, with respect to the longitudinal axis of graft, or prosthesis, 70', so as to be able to negotiate the curves or bends found in body passageways 80. As seen in FIG. 9, as graft, or prosthesis, 70' bends, or articulates about the longitudinal axis of graft 70', the spacing between tubular members 71 increases, or expands, about the outer side of the curve, or bend, 103; and the spacing decreases, or is compressed, on the inner side of the curve, or bend, 104. Likewise, spiral connector members 102 adjacent the outer side of the curve 103 **flexibly and resiliently stretch to permit the expansion of the spacing thereat**; and the spiral connector members 102 adjacent the inner side of the curve, 104 **flexibly and resiliently compress to permit the decrease in the spacing between tubular members 71** on the inner side of curve 104. It should be noted that connector members 100 permit the bending, or articulation, of adjacent tubular members 71 in any direction about the longitudinal axis of graft, or prosthesis, 70'.

[*30]

('417 patent, col. 12, lns. 7-14, 41-63; see also '984 patent, col. 10, ln. 68 to col. 11, lns. 1-5, 23-32) (emphasis added). In sum, AVE argues that the connector members "must be long enough to provide sufficient spacing between adjacent tubular members to allow them to successfully pass through the bends and curves in the vascular system" and in order to be "capable of having a structural orientation, i.e., of either being parallel or non-parallel to the longitudinal axis of the adjacent grafts or prostheses." (D.I. 300 at 30-31)

n12 Cordis correctly points out that this limitation is described in claims 2 and 5 of the '984 patent, which depend from claims 1 and 4, respectively.

In contrast to its portrayal of the patents' connector members, AVE maintains that its "stent elements . . . are autogenously laser-fused . . . to form a rigid, welded joint" and, thus, are not connected by discrete, elongate structures. The word "joint" is defined as "a place where two things or parts are joined or united"; [*31] "an area at which two ends, surfaces, or edges are attached." Webster's at 1219. AVE offers a more technical definition, that is, "the surface at which two or more mechanical or structural components are united." (D.I. 300 at 32)

The court declines to add an "elongate" limitation to the phrase "connector member." The phrase as used in

the independent claims at issue does not require elongation. Nor does the phrase itself connote any function other than that of connecting. So long as the connecting component is "individually distinct" (i.e., it can be identified as something different from adjacent components), it is discrete. Therefore, AVE's motion for summary judgment as to this limitation is denied.

Connector Member Limitation - Doctrine of Equivalents

Consistent with the discussion above, the court is not prepared to find, on the record presented, that AVE's welded joints do not perform substantially the same function, in substantially the same way, to achieve substantially the same result as the connector members claimed in the '417 patent and '984 patent.

Coplanar Limitation

Based on the court's claim construction, AVE's motion for summary judgment is [*32] denied as to this limitation.

CONCLUSION

For the reasons stated, Cordis' motion for summary judgment is denied, ACS' motion for summary judgment is granted in part and denied in part, and AVE's motion for summary judgment is granted in part and denied in part.

An order shall issue.

Time of Request: August 24, 2005 09:12 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

9 of 10 DOCUMENTS

CORDIS CORPORATION and EXPANDABLE GRAFTS PARTNERSHIP, Plaintiffs, v. ADVANCED CARDIOVASCULAR SYSTEMS, INC.; GUIDANT CORPORATION; ARTERIAL VASCULAR ENGINEERING, INC.; BOSTON SCIENTIFIC CORPORATION; and SCIMED LIFE SYSTEMS, INC., Defendants. ARTERIAL VASCULAR ENGINEERING, INC., Plaintiff, v. CORDIS CORPORATION, JOHNSON & JOHNSON, and EXPANDABLE GRAFTS PARTNERSHIP, Defendants.

Civil Action No. 97-550-SLR (Consolidated), Civil Action No. 97-700-SLR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

1999 U.S. Dist. LEXIS 387

January 15, 1999, Decided

NOTICE: [*1] FOR ELECTRONIC PUBLICATION ONLY

CASE SUMMARY:

PROCEDURAL POSTURE: The court addressed multiple motions relating to a series of patents involving expandable intraluminal grafts and construed disputed claim language.

OVERVIEW: The court construed disputed claim language in a series of patents involving expandable intraluminal grafts. As a result of the shared history of the patents, the language used in the claims was substantially similar, and the court construed it consistently. The court began with the claim language and employed normal rules of syntax. The court also reviewed the specification and prosecution history. An intraluminal graft was a structure designed for use within a body passageway to compensate for a defect in the passageway. The court continued to hold that each such graft must be functional; once it had expanded and deformed, it must be capable of serving to prevent a body passageway from collapsing. In construing the phrase "by at least one flexible connector member disposed between adjacent grafts," the court determined there was no requirement in the claim language that each individual graft be flexible, only that the connector member be flexible. Other words and

phrases the court construed included: "thin-walled tubular member," "slots," "wall surface having a substantially uniform thickness and a plurality of slots formed therein," and "coplanar with each tubular member."

OUTCOME: The court construed disputed claim language in a series of patents involving expandable intraluminal grafts by looking at the claim language, rules of syntax, the specification, and prosecution history.

LexisNexis(R) Headnotes

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN1] The principles of claim interpretation are well established in the law. The exercise begins always with the claim language, which defines the scope of the claim. In analyzing claim language, the court must employ normal rules of syntax, for a claim must be read in accordance with the precepts of English grammar. The court must ascribe to any technical term used in a claim the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning. Absent an express intent to impart a novel meaning to a claim term, the language of the claim is given its ordinary meaning.

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

Patent Law > Claims & Specifications > Claim Language > General Overview

[HN2] In order to give context to claim language, a court must review as well the specification. The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. As the court has repeatedly stated, claims must be read in view of the specification, of which they are a part. The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term. Nonetheless, the claimed invention may not be limited to preferred embodiments or specific examples described in the specification.

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN3] The last source of intrinsic evidence relevant to claim interpretation is the prosecution history of the patent, if it has been made part of the record. This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims. The claims, specification, and file history constitute the public record of the patentee's claim, a record on which the public is entitled to rely. In other words, competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention.

Patent Law > Claims & Specifications > Definiteness > General Overview

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

Patent Law > Infringement Actions > Claim Interpretation > General Overview

[HN4] In order to further the fair notice function of the requirement that the patentee distinctly claim the subject matter disclosed in the patent from which he can exclude others temporarily, extrinsic evidence of claim interpretation, such as expert testimony, is not encouraged by the federal circuit. However, expert testimony may be relevant and helpful to an understanding of the claim language as used by one of ordinary skill in the art.

Patent Law > Infringement Actions > Exclusive Rights > General Overview

[HN5] The general principle is that a product patent gives the patentee the right to restrict the use and sale of the product regardless of how it was manufactured.

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JUDGES: Sue L. Robinson, District Judge.

OPINIONBY: Sue L. Robinson

OPINION:

MEMORANDUM OPINION

Dated: January 15, 1999
Wilmington, Delaware

ROBINSON, District Judge

I. INTRODUCTION

Pending before the court are multiple motions filed [*3] in the above-captioned cases, all relating to a series of patents involving "expandable intraluminal grafts." That which follows is the court's construction of disputed claim language. Separate opinions addressing the substantive issues of infringement and validity shall follow.

II. BACKGROUND

The patents-in-suit are U.S. Patent Nos. 4,739,762 ("the '762 patent"), n1 5,102,417 ("the '417 patent"), and 5,195,984 (the '984 patent"). n2 The '762 patent is a continuation-in-part ("CIP") of U.S. Patent No. 4,733,665 ("the '665 patent") and the '417 patent is a CIP of the '762 patent. The '417 and '984 patents have substantially similar disclosures.

n1 The '762 patent was submitted for re-examination in October 1997. The Patent and Trademark Office apparently confirmed the patentability of claims 23 and 34, and found claims 1-12, 14-22, 25-33, and 35-42, as amended, and new claims 44-59, to be patentable. (C.A. No. 97-550, D.I. 323, Ex. D)

n2 All the patents-in-suit are reproduced, e.g., in C.A. No. 97-550, D.I. 323, Exs. A, B, C, and E.

[*4]

The '762 patent, filed on November 3, 1986, discloses a single expandable intraluminal graft, and a method and apparatus for implanting it. As summarized in the '762 patent,

the invention relates to an expandable intraluminal graft for use within a body passageway or duct and, more particularly, expandable intraluminal vascular grafts which are particularly useful for repairing blood vessels narrowed or occluded by disease; and a method and apparatus for implanting expandable intraluminal grafts.

('762 patent, col. 1, lns. 19-25) The specification of the '762 patent describes the expandable intraluminal graft as follows:

The present invention includes a **thin-walled tubular member** having first and second ends and a wall surface disposed between the first and second ends, the wall[']s surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of the tubular member; the tubular shaped member having a first diameter which permits intraluminal delivery of the thin-walled tubular member into a body passageway having a lumen; and the tubular member having [*5] a second, expanded diameter, upon the application from the interior of the tubular member of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular member, whereby the tubular shaped member may be expanded and deformed to expand the lumen of the body passageway.

* * * *

The method of the present invention comprises the steps of: **utilizing a thin-walled, tubular member as the prosthesis**, the tubular member having a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of the tubular member

* * * *

The expandable intraluminal vascular graft, method for implanting a prosthesis within a body passageway, and apparatus

for intraluminally reinforcing a body passageway of the present invention, when compared with previously proposed prior art intraluminal grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevents recoil of the body [*6] passageway; prevents erosion of the body passageway by the expanded graft; and permits expansion of the graft to a variable size dependent upon conditions within the body passageway.

('762 patent, col. 3, lns. 34-51; col. 4, lns. 6-11, 62-68 and col. 5, lns. 1-7) (emphasis added).

When the '417 patent application was filed in 1988, an additional problem was addressed.

For repairing blood vessels narrowed or occluded by disease, or repairing other body passageways, the length of the body passageway which requires repair, as by the insertion of a tubular prosthetic graft, may present problems if the length of the required graft cannot negotiate the curves or bends of the body passageway through which the graft is passed by the catheter. In other words, in many instances, it is necessary to support a length of tissue within a body passageway by a graft, wherein the length of the required graft exceeds the length of a graft which can be readily delivered via a catheter to the desired location within the vascular system. Some grafts do not have the requisite ability to bend so as to negotiate the curves and bends present within the vascular system, * particularly prostheses [*7] or grafts which are relatively rigid and resist bending with respect to their longitudinal axes.

('417 patent, col. 3, lns. 5-21; '984 patent, col. 2, lns. 63-68 and col. 3, lns. 1-11) Consequently, the '417 patent, although mirroring the '762 patent, added

[a] further feature . . . that **at least one connector member** may be disposed in a nonparallel relationship with respect to the longitudinal axis of the **tubular members**. Another feature of the present invention is that . . . at least one connector member may be disposed coplanar with each tubular member and non-parallel to the longitudinal axis of the tubular members. An additional feature of the present invention is that at least one connector member may be a thin-walled, spiral member, coplanar with adjacent tubular members.

('417 patent, col. 4, lns. 8-18) (emphasis added).

The '984 patent, filed in 1991, substituted the following feature for that recited above, that there be a

single connector member [which] may be a thin-walled, elongate bar member, **coplanar with adjacent tubular members**. An additional feature of the present invention is that a first connector member [*8] may be disposed between the second end of a first tubular member and the first end of a second tubular member; a second connector member may be disposed between the second end of the second tubular member and the first end of a third tubular member; the first and second connector members being angularly offset from one another with respect to the longitudinal axis of the tubular members.

('984 patent, col. 3, ln. 68 and col. 4, lns. 1-10) (emphasis added).

The disclosure by the '417 and '984 patents of "connector members" added to the invention's advantages by

permitting tissue of an elongated section, of a body passageway to be supported by an elongated graft; and providing the necessary flexibility to negotiate the bends and curves in tortuous body passageways, such as the vascular system.

('984 patent, col. 4, lns. 20-25; '417 patent; col. 5, lns. 39-43)

III. STANDARD OF REVIEW

Before the court can determine whether any of the asserted claims read on the accused products, the court must construe the claims at issue. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370, 134 L. Ed. [*9] 2d 577, 116 S. Ct. 1384 (1996). [HN1] The principles of claim interpretation are well established in the law. The exercise begins always with the claim language, which defines the scope of the claim. See *York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1572 (Fed. Cir. 1996). In analyzing claim language, the court must employ "normal rules of syntax," *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 114 F.3d 1547, 1553 (Fed. Cir. 1997), for "[a] claim must be read in accordance with the precepts of English grammar." In *re Hyatt*, 708 F.2d 712, 714 (Fed. Cir. 1983). The court must ascribe to any technical term used in a claim "the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning." *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1578 (Fed. Cir. 1996). Absent an express intent to impart a novel meaning to a claim term, the language of the claim is given its ordinary meaning. *York Prods. Inc.*, 99 F.3d at 1572; *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d [*10] 615, 620 (Fed. Cir. 1995).

[HN2] In order to give context to the claim language, the court must review as well the specification.

The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication As we have repeatedly stated, "claims must be read in view of the specification, of which they are a part." . . . The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Vitronics Corp. v. Conceptor, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996) (citations omitted). Nonetheless, the claimed invention may not be limited to preferred

embodiments or specific examples described in the specification. *Texas Instruments, Inc. v. United States Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986).

[HN3] The last source of intrinsic evidence relevant to claim interpretation is the prosecution history of the patent, if it has been made [*11] part of the record.

This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims.

. . . The claims, specification, and file history . . . constitute the public record of the patentee's claim, a record on which the public is entitled to rely. In other words, competitors are entitled to review the public record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention.

Vitronics Corp., 90 F.3d at 1582-83.

[HN4] In order to further the "fair notice function of the requirement that the patentee distinctly claim the subject matter disclosed in the patent from which he can exclude others temporarily," *Athletic Alternatives, Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1581 (Fed. Cir. 1996), extrinsic evidence of claim interpretation, such as expert testimony, is not encouraged by the Federal Circuit. See, [*12] e.g., *Vitronics Corp.*, 90 F.3d 1576 at 1583. The court recognizes, however, that expert testimony may be relevant and helpful to an understanding of the claim language as used by one of ordinary skill in the art.

IV. ANALYSIS

As a result of the shared history of the patents-in-suit, the language used in the multiple claims asserted is substantially similar and, the court believes, should be construed consistently. As exemplary claims for purposes of claim construction, independent claims 17 and 25 of the '417 patent include most of the disputed claim language. Claim 17, a method claim, reads as follows:

A method for expanding the lumen of a body passageway comprising the steps of:

connecting a plurality of intraluminal grafts by at least one flexible connector member disposed between adjacent grafts; inserting the plurality of connected intraluminal grafts, disposed upon a catheter, into the body passageway until the grafts are disposed adjacent a desired location within the body passageway; and expanding a portion of the catheter to provide controllable expansion of the intraluminal grafts radially, outwardly into contact with the body passageway, by deforming a portion [*13] of the intraluminal grafts with a force in excess of the elastic limit of the portion of the intraluminal grafts, until the lumen of the body passageway at the desired location in the body passageway has been expanded, whereby the intraluminal grafts prevent the body passageway from collapsing and decreasing the size of the expanded lumen, and the intraluminal grafts remain in the passageway.

('417 patent, col. 14, lns. 39-59) Claim 25 reads:

An expandable intraluminal vascular graft, comprising:
a plurality of thin-walled tubular members, each having first and second ends and a wall surface disposed between the first and second ends, the wall surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of each tubular member;
at least one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members;
each tubular member having a first diameter which permits intraluminal delivery of the tubular members into a body passageway having a lumen; and
the tubular members having a second, expanded and deformed diameter, upon the [*14] application from the interior of the tubular members of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular members,

whereby the tubular members may be expanded and deformed to expand the lumen of the body passageway.

('417 patent, col. 15, lns. 19-40) n3

n3 Claim 29 is substantially identical to claim 25 except that it describes "an expandable prosthesis for a body passageway . . ." ('417 patent, col. 15, lns. 53-68 and col. 16, lns. 1-6) (emphasis added). The word "prosthesis," defined as "an artificial device to replace a missing part of the body," Webster's Third New International Dictionary 1822 (1993) ("Webster's"), is used in the patents-in-suit interchangeably with the word "graft," although the patents distinguish "grafts" as being used to expand "partially occluded segments of a blood vessel, or body passageway," while "prostheses" are used to expand "many other types of body passageways." ('417 patent, col. 6, lns. 22-33)

[*15]

Independent claims 1 and 4 of the '984 patent track the language of claim 25 of the '417 patent except for the following limitation:

Only one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members, the connector member being disposed in a substantially parallel relationship with respect to the longitudinal axis of the tubular members and coplanar with each tubular member. . . .

('984 patent, claim 1 at col. 11, lns. 53-59; see also claim 4 at col. 12, lns. 32-38)

Claim 17 - '417 patent

The first element in claim 17 that requires interpretation n4 is the phrase "connecting a plurality of intraluminal grafts." To "connect" means "to join, fasten, or link together usually by means of something intervening . . ." Webster's at 480. A "plurality" refers to the state of being "plural," which relates to or consists of or contains more than one. Id. at 1745. "Intraluminal" means being within the lumen, or the cavity or passageway of a tubular organ such as a blood vessel. Id. at 1185, 1345. A "graft" is a structure that is "implanted . . . surgically . . . to compensate for a defect" in a body [*16] organ or

tissue. Webster's II New College Dictionary 483 (1995).
 n5 Therefore, an "intraluminal graft" is a structure designed for use within a body passageway to compensate for a defect in said passageway. ('417 patent, col. 1, lns. 28-35; col. 6, lns. 23-54; col. 9, lns. 6-13) The court continues to hold that each such "graft" must be functional; i.e., once it has "expanded and deformed," it must be capable of "serving to prevent a body passageway from collapsing" ('417 patent, col. 8, lns. 60-63)

n4 The court preliminarily construed disputed claim language for purposes of resolving motions for injunctive relief. To some extent, therefore, the following analysis may be repetitive of the court's July 17, 1998 memorandum opinion. (D.I. 284)

n5 The court has relied more substantially in this opinion on Webster's Third New International Dictionary for definitions simply because it is the version purchased for and easily available to the court.

The next element in dispute in claim 17 is [*17] the phrase "by at least one flexible connector member disposed between adjacent grafts." A "member" is defined as a constituent part of a whole, a component serving to form, compose or make up a unit or whole. Webster's at 1408, 486. A "connector member," therefore, is a discrete structure n6 disposed or particularly arranged between adjacent grafts in order to join them together. "Flexible" means capable of being flexed, turned, bowed, or twisted without breaking. Id. at 869. The word "flexible" clearly modifies the phrase "connector member." Although it is a purpose of the invention to describe an intraluminal graft "able to flexibly bend, or articulate, with respect to the longitudinal axis of [the] graft" ('417 patent, col. 12, lns. 44-45), there is no requirement in the claim language that each individual graft be flexible, only that the connector member be flexible. This interpretation is consistent with the disputed language of claim 25, which more specifically requires that the connector member be particularly arranged "to flexibly connect" adjacent structures; again, it is the connector member and not the adjacent structures which must provide flexibility.

n6 Connecting "by means of something intervening" Webster's at 480 (emphasis added).

[*18]

Claim 25 - '417 patent

Claim 25 is a product claim that specifically describes an "expandable intraluminal vascular graft" as comprising at least two "thin-walled tubular members," each tubular member having two ends and a "wall surface" disposed between the two ends. The "wall surface" of each tubular member is further described as having a "substantially uniform thickness" and "a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of each tubular member."

With respect to what comprises a "thin-walled tubular member," a "tubular member" is a discrete structure that has the form of a tube, that is "a hollow elongated usually cylindrical body" Webster's at 2459, 2460. An "elongated" form is "notably long in comparison to its width." Id. at 737. n7 Claim 25 of the '417 patent requires that each tubular member have a wall surface with a "plurality of slots formed therein" The word "wall" is defined as "the external layer of structural material surrounding an object." Id. at 2572. The word "surface" is defined as "the exterior or outside of an object or body" Id. at 2300. A "slot" is [*19] "a long and narrow opening or groove." Id. at 2146; accord '762 patent, col. 7, lns. 17-20. n8 To "form" is "to give a particular shape to." Webster's at 893. "Therein" means "in or into that thing." Id. at 2372.

n7 Accord C.A. No. 97-550, D.I. 321, Ex. D; definition of "slot," infra.

n8 "Use of the term 'slot' encompasses an opening whose length is substantially greater than its width, such as an elongated oval opening."

Cordis maintains that a "tubular member" is a "basic 'building block' of the slotted tube invention," that is, "a tubular member the length of a half-slot with alternating opened and closed slots at each end of the tubular member." (C.A. No. 97-550, D.I. 327, P 20) Cordis relies for its argument on the following language:

Accordingly, slots 82 are preferably uniformly and circumferentially spaced from adjacent slots, and slots 82 adjacent to one another along the longitudinal axis of tubular member 71 are in a staggered relationship with one another. Alternating [*20] slots disposed about the circumference of tubular member 71 at both the first and second ends 72, 73 of tubular member 71 will only have a length equal to approximately one-half of the length of a complete slot 82, such half-slot 82 being

bounded by members 78, 79 at both the first and second ends 72, 73 of tubular member 71.

('762 patent, col. 7, lns. 3-13; see also '417 patent, col. 7, lns. 49-68 and col. 8, lns. 1-3; '984 patent, col. 6, lns. 26-36) As further explained in the specification, the use of alternating "half-slots" at either end of the tubular member permits the graft or prosthesis "to be expanded uniformly, and outwardly, in a controlled manner" ('417 patent, col. 7, lns. 65-67; '984 patent, col. 6, lns. 42-44)

Cordis' interpretation finds some support in the language of the specification and claim 25 of the '417 patent. Although the specification describes both "complete slot 82" and "half-slot 82," it refers to both generally as "slots." Given that the presence of "half-slots" apparently is essential to the functioning of the graft as contemplated in the patent, the failure of the claim to differentiate between complete and half-slots is a further [*21] indication that the term "slots" refers to both complete and half-slots. Therefore, the court concludes that the term "slots" referred to in claim 25 is not limited to "complete" slots. n9

n9 The court found nothing in the patent or the dictionary definition to limit "slots" to those which are bound on all sides, i.e., "complete" slots. The court notes, however, that in Figures 1A, 1B, 7, and 10, only the "complete slots" are labeled "slots 82"; the half-slots are not similarly labeled.

This conclusion is consistent with the description given in the specification of the length of each "graft, or prosthesis, 70." The specification indicates that each "graft, or prosthesis, 70" has a length of at least "one slot 82." n10 If each "graft, or prosthesis, 70" is comprised of at least two tubular members and each tubular member may be the length of only a "half-slot 82," one could argue that the length of such a graft is "one slot." n11 Consistent with the court's holding that a graft or prosthesis must be functional, [*22] however, a graft or prosthesis comprised of only two "tubular members" must be capable of "retaining its expanded and deformed configuration with the enlarged diameter . . . and resist radial collapse." ('417 patent, col. 7, lns. 6-14; '984 patent, col. 5, lns. 51-54)

n10 Compare '417 patent, col. 7, lns. 59-63 with col. 11, lns. 51-55.

n11 It is always difficult for a court to differentiate between what the claim language arguably describes and the preferred embodiment actually describes in the specification. This difficulty is particularly acute in a case such as this, where a preferred embodiment has been described in a series of patents. For instance, building on the invention of the '762 patent (i.e., "utilizing a thin-walled, tubular member as the prosthesis," col. 4, lns. 7-8), the specification of the '417 patent contemplates that the graft or prosthesis disclosed "generally includes a plurality of prostheses, or grafts 70 as defined previously in connection with FIGS 1A, 1B and 2," which figures are taken from the '762 patent. ('417 patent, col. 11, lns. 48-51) In Figures 1A, 1B and 7 of the '417 and '984 patents, the graft or prosthesis "70" and tubular member "71" are identified as the same structure. Likewise, the various written descriptions given of "thin-walled tubular members" are substantially the same as those given of "prostheses." (Compare, e.g., '417 patent, col. 3, lns. 57-63 with col. 5, lns. 4-10) The "connector members" are described as flexibly connecting both "adjacent tubular members" and "adjacent prostheses." (Compare, e.g., '417 patent, col. 3, lns. 63-65; col. 4, lns. 23-25, 59-61; col. 5, lns. 10-13; col. 12, lns. 7-21, 41-51, 59-63) Given the apparent "interchangeability" of the phrases "tubular members," "grafts," and "prostheses," it is with some reluctance that the court distinguishes between these structures for purposes of claim construction.

[*23]

In sum, although a "thin-walled tubular member" may be comprised of only "half slots," each tubular member must be elongated (i.e., its length is greater than its width) and, in combination with only an additional tubular member, must be capable of functioning as an expandable intraluminal graft.

Also in dispute is whether the language "wall surface having a substantially uniform thickness and a plurality of slots **formed therein**" implicates a manufacturing requirement. Initially, the court agrees that the claim language does not specifically incorporate the manufacturing description given in the specification. ('762 patent, col. 6, lns. 41-44) The court further acknowledges [HN5] the general principle that "[a] product patent gives the patentee the right to restrict the use and sale of the product regardless of how . . . it was manufactured." *United States v. Studiengesellschaft Kohle*, 216 U.S. App. D.C. 303, 670 F.2d 1122, 1127 (D.C. Cir. 1981). Because the claim language is somewhat confusing, n12

the court finds it helpful to review the history of the language.

n12 For instance, the claim speaks in terms of the wall's **surface** having "a substantially uniform thickness." It is commonly understood that surfaces do not have a "thickness"; walls have a thickness. See '417 patent, col. 7, lns. 19-22.

[*24]

The '665 patent includes in the specification two embodiments of a graft generally described as a "wire mesh tube." Both embodiments are comprised of intersecting elongate members, the elongate members being either "small diameter stainless steel wires having a cylindrical cross-section" n13 or "small bars" formed by etching openings in a thin-walled stainless steel tube. ('665 patent, col. 6, lns. 12-44 and col. 7, lns. 3-20) Despite the differences between the two embodiments, presumably they both fall within the scope of the following claim language:

[A] tubular shaped member having first and second ends and a wall surface disposed between the first and second ends, **the wall surface being formed by a plurality of intersecting elongate members . . .**

('665 patent, claim 13 at col. 10, lns. 48-54; see also claim 18 at col. 11, lns. 21-27; claim 23 at col. 12, lns. 6-10; claim 26 at col. 12, lns. 33-37) (emphasis added). Only the second embodiment found its way into the '762 patent, the specification describing it as such:

Preferably, tubular member 71 is initially a thin-walled stainless steel tube having a uniform wall thickness, and a plurality [*25] of slots 82 are formed in the wall surface 74 of tubular member 71.

('417 patent, col. 7, lns. 19-22)

n13 The court notes that the intersecting elongate members of this embodiment preferably were "fixedly secured to one another" at the point of intersection by any conventional manner, "such as by welding, soldering, or gluing . . ." ('665 patent, col. 6, lns. 36-52)

For whatever reason, the emphasis from the '665 to the '767, '417, and '984 patents changed from describing what formed the wall surface (intersecting elongate members which implicitly form "openings," '665 patent, col. 7, lns. 15-16) to what was formed in the wall surface (a plurality of slots forming "intersecting elongate members"). n14 Nevertheless, the structure (and the method of manufacturing the structure) remained the same. Therefore, although the phrase "a plurality of slots formed therein" modifies the phrase "wall surface" (arguably implying a manufacturing limitation), n15 the court concludes that, whether the presence of material [*26] (elongate members) or the absence of material (slots) is emphasized, the structure of the product claimed is adequately described and does not implicate a manufacturing requirement.

n14 "Thus, the formation of slots 82 results in at least one elongate member being formed between adjacent slots 82 . . ." ('417 patent, col. 7, lns. 33-35)

n15 Cordis' argument that the phrase modifies "thin-walled tubular members" neglects the normal rules of syntax.

Claims 1 and 4 - '984 patent

As a final matter, in dispute is the phrase "coplanar with each tubular member," referring to the connector member described in claims 1 and 4 of the '984 patent. "Coplanar" is defined as "lying or acting in the same plane," a "plane" being "a surface such that the straight line that joins any two of its points lies wholly in that surface." Webster's at 502, 1730. In describing "connector members 100," the specification of the '984 patent provides as follows:

Disposed between adjacent tubular members, 71, or adjacent [*27] grafts, or prostheses, 70, is a single connector member 100 to flexibly connect adjacent tubular members 71 or grafts, or prostheses, 70. Connector members 100 are preferably formed of the same material as grafts 70, as previously described, and connector members 100 may be formed integrally between adjacent grafts 70, or tubular members 71, as shown in FIG. 7. The cross-sectional configuration of connector members 100, along the longitudinal axis of graft, or prosthesis, 70', is the same, in

that connector members 100 have the same uniform wall thickness of elongate members 75 and thus form a thin-walled, elongate bar member 101 which is coplanar with adjacent tubular members 71. Of course, it should be readily apparent to one of ordinary skill in the art, that the thickness of connector members 100 could alternatively be smaller than elongate member 75; however, it is preferable that the outer circumferential surface 102 of connector members 100 lies in the same plane formed by the wall surfaces 74 of grafts, or prostheses, 70, as seen in FIG. 7.

three-dimensional structure. n16 The specification nevertheless describes three embodiments which presumably fall within the scope of the disputed claim language: (1) the connector member is as thick as the tubular member and so is aligned with both its inner and outer walls; (2) the connector member is thinner than the tubular member and lies within (i.e., is aligned with neither) its inner and outer walls; and (3) the connector member is thinner than the tubular member and is aligned with its outer wall. The court agrees with Cordis that the word "coplanar" should be given the broader scope provided for in the specification.

n16 Just as a two-dimensional "surface" does not have a three-dimensional "thickness."

('984 patent, col. 10, lns. 28-48)

The court agrees with Cordis that the word "coplanar" is not a particularly helpful description [*28] of a

1998 U.S. Dist. LEXIS 11342, *

Time of Request: August 24, 2005 09:13 AM EDT

Research Information:

Patent Cases from Federal Courts and Administrative Materials
5102417 or 5,102,417

10 of 10 DOCUMENTS

CORDIS CORPORATION and EXPANDABLE GRAFTS PARTNERSHIP, Plaintiffs, v. ADVANCED CARDIOVASCULAR SYSTEMS, INC.; GUIDANT CORPORATION; ARTERIAL VASCULAR ENGINEERING, INC.; BOSTON SCIENTIFIC CORPORATION; and SCIMED LIFE SYSTEMS, INC., Defendants.

Civil Action No. 97-550-SLR

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

1998 U.S. Dist. LEXIS 11342

July 17, 1998, Decided

DISPOSITION: [*1] Cordis' request for injunctive relief denied.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs filed a motion for a preliminary injunction in a patent infringement action concerning plaintiffs' patents on an expandable vascular graft.

OVERVIEW: Plaintiffs filed an action alleging infringement of a patent concerning an expandable vascular graft. Plaintiffs filed a motion for a preliminary injunction. The court denied plaintiffs' motion. The court held that the weight of the evidence did not support injunctive relief. The court further concluded that there was insufficient evidence that plaintiffs would succeed on one claim that pertained to an intraluminal graft. In addition, the court determined that plaintiffs failed to carry its burden of persuasion that it could withstand a challenge to the validity of plaintiffs' patent in light of prior art.

OUTCOME: The court denied plaintiffs' motion for a preliminary injunction in a patent infringement action.

LexisNexis(R) Headnotes

Patent Law > Remedies > Equitable Relief > Injunctions

[HN1] The framework for analyzing a request for injunctive relief at the preliminary stages of litigation rests upon two fundamental principles: a preliminary injunction constitutes extraordinary relief and the grant or denial of such relief is within the discretion of the court. These underpinnings are not absolute, however, and the court's discretion must be measured against the standards governing the issuance of an injunction.

Patent Law > Remedies > Equitable Relief > Injunctions

[HN2] To obtain a preliminary injunction pursuant to 35 U.S.C.S. § 283, a party must demonstrate that: 1) it has a reasonable likelihood of success on the merits; 2) it would suffer irreparable harm if the injunction were not granted; 3) the balance of relative hardships tips in its favor; and 4) an injunction would not have a negative impact on the public interest. These factors, taken individually, are not dispositive; rather, the district court must weigh and measure each factor against the other factors and against the form and magnitude of the relief requested.

Patent Law > Infringement Actions > Infringing Acts > General Overview

[HN3] Literal infringement involves a two-step determination: the proper construction of the asserted claims and a determination whether the claims as properly construed read on the accused product or method.

Patent Law > Claims & Specifications > Claim Language > General Overview

[HN4] The principles of claim interpretation are well established in the law. The exercise begins always with the claim language, which defines the scope of the claim.

Patent Law > Claims & Specifications > Claim Language > General Overview

[HN5] In analyzing claim language, the court must employ normal rules of syntax, for a claim must be read in accordance with the precepts of English grammar. The court must ascribe to any technical term used in a claim the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning.

Patent Law > Claims & Specifications > Description Requirement > General Overview

[HN6] In order to give context to the claim language, the court must review the specification as well.

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

Patent Law > Claims & Specifications > Description Requirement > General Overview

[HN7] The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication. The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Patent Law > U.S. Patent & Trademark Office Proceedings > Examinations > General Overview

[HN8] The last source of intrinsic evidence relevant to claim interpretation is the prosecution history of the patent, if it has been made part of the record. The history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims.

Patent Law > Claims & Specifications > Description Requirement > General Overview

[HN9] In order to further the fair notice function of the requirement that the patentee distinctly claim the subject matter disclosed in the patent from which he can exclude others temporarily, extrinsic evidence of claim interpretation, such as expert testimony, is not encouraged by the federal circuit.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Claimed Invention as a Whole

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

[HN10] Under 35 U.S.C.S. § 103, a patent may not be obtained if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patent Law > Nonobviousness > Elements & Tests > Prior Art

Patent Law > Nonobviousness > Elements & Tests > Secondary Considerations

Patent Law > Nonobviousness > Elements & Tests > Ordinary Skill Standard

[HN11] The obviousness determination lends itself to several basic factual inquiries. Under 35 U.S.C.S. § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this backdrop, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Patent Law > Inequitable Conduct > Effect, Materiality & Scierter > General Overview

Patent Law > Claims & Specifications > Enablement Requirement > General Overview

Patent Law > Nonobviousness > Elements & Tests > General Overview

[HN12] The factual inquiries relevant to the obviousness inquiry include: (1) the level of skill in the pertinent art; (2) the scope and content of the prior art as viewed through the eyes of the skilled artisan at the time of the invention; (3) the differences between the claimed invention and the prior art; and (4) relevant secondary considerations.

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JUDGES: Sue L. Robinson, District Judge.

OPINIONBY: Sue L. Robinson

OPINION:

MEMORANDUM OPINION

Dated: July 17, 1998
Wilmington, Delaware

Sue L. Robinson
District Judge

I. INTRODUCTION

Pending before the court is a motion for preliminary injunction filed by plaintiffs Cordis Corporation and Ex-

pandable Grafts Partnership (hereinafter referred to collectively as "Cordis") against defendant Advanced Cardiovascular Systems, Inc. (hereinafter referred to as "ACS"). (D.I. 140) At issue is U.S. Patent No. 5,102,417 (the " '417 patent") and Cordis' charge that the ACS "MULTI-LINK" stent n1 (hereinafter referred to as the "MULTI-LINK") infringes claims 17 and 25 of the '417 patent.

n1 The word "stent" does not appear in the '417 patent, it being relatively new nomenclature in this field. The court understands that the word "stent" in the context of this litigation describes a device which, when expanded within a blood vessel narrowed or occluded by disease, serves as scaffolding to reopen and support the vessel. A "stent" generally refers to any device used to hold in place various materials, as first described by Charles Stent, a nineteenth century English dentist. (PX 379)

[*3]

For the reasons that follow, Cordis' request for injunctive relief shall be denied.

II. FACTS

The '417 patent issued in 1992 as a continuation-in-part to U.S. Patent Nos. 4,739,762 (the " '762 patent") and 4,733,665 (the " '665 patent"), both of which issued in 1988. All three of these patents are entitled "Expandable Intraluminal Graft, and Method and Apparatus for Implanting an Expandable Intraluminal Graft." As summarized in the '762 and '665 patents,

the invention relates to an expandable intraluminal graft for use within a body passageway or duct and, more particularly, expandable intraluminal vascular grafts which are particularly useful for repairing blood vessels narrowed or occluded by disease; and a method and apparatus for implanting expandable intraluminal grafts.

(PX 7/API 3: '665 patent, col. 1, lns. 11-17; D.I. 63: '762 patent, col. 1, lns. 19-25) The specification describes the expandable intraluminal graft as follows:

In accordance with the invention the foregoing advantages have been achieved through the present expandable intralu-

minal vascular graft. The present invention includes a **tubular shaped member** having first and second [*4] ends and a wall surface disposed between the first and second ends, the wall surface being formed by a plurality of intersecting elongate members, at least some of the elongate members intersecting with one another intermediate the first and second ends of the tubular shaped member; the tubular shaped member having a first diameter which permits intraluminal delivery of the tubular shaped member into a body passageway having a lumen; and the tubular shaped member having a second, expanded diameter, upon the application from the interior of the tubular shaped member of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular shaped member, whereby the tubular shaped member may be expanded to expand the lumen of the body passageway.

...

The expandable intraluminal vascular graft, method for expanding the lumen of a body passageway, and apparatus for intraluminally reinforcing a body passageway of the present invention, when compared with previously proposed prior art intraluminal grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; [*5] is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevents recoil of the body passageway; and permits expansion of the graft to a variable size dependent upon conditions within the body passageway.

(PX 7/API 3: '665 patent, col. 3, lns. 20-39; col. 4, lns. 41-53; D.I. 63: '762 patent, col. 3, lns. 32-51; col. 4, lns. 62-68; col. 5, lns. 1-7) (emphasis added).

By the time the '417 patent application was filed in 1988, the inventors recognized that,

for repairing blood vessels narrowed or occluded by disease, or repairing other

body passageways, the length of the body passageway which requires repair, as by the insertion of a tubular prosthetic graft, may present problems if the length of the required graft cannot negotiate the curves or bends of the body passageway through which the graft is passed by the catheter. In other words, in many instances it is necessary to support a length of tissue within a body passageway by a graft, wherein the length of the required graft exceeds the length of a graft which can be readily delivered via a catheter to the desired location within the vascular [*6] system. Some grafts do not have the requisite ability to bend so as to negotiate the curves and bends present within the vascular system, particularly prostheses or grafts which are relatively rigid and resist bending with respect to their longitudinal axes.

(PX 1/API 1: '417 patent, col. 3, lns. 5-21) Consequently, the '417 patent, although mirroring the '665 and '762 patents, added

[a] further feature . . . that at least one **connector member** may be disposed in a nonparallel relationship with respect to the longitudinal axis of the **tubular members**. Another feature of the present invention is that . . . at least one connector member may be disposed coplanar with each tubular member and non-parallel to the longitudinal axis of the tubular members. An additional feature of the present invention is that at least one connector member may be a thin-walled, spiral member, coplanar with adjacent tubular members.

(PX 1/API 1: '417 patent, col. 4, lns. 8-18) (emphasis added). Accordingly,

the expandable intraluminal vascular graft, method for implanting a **plurality of prostheses** within a body passageway, and apparatus for intraluminally reinforcing [*7] a body passageway of the present invention, when compared with previously proposed prior art intraluminal

grafts, methods for implanting them, and balloon dilation techniques have the advantages of: preventing recurrence of stenoses; is believed to permit implantation of grafts in critical body passageways, such as in the left main coronary artery of the heart; prevent recoil of the body passageway; prevents erosion of the body passageway by the expanded grafts; permits expansion of the graft to a variable size dependent upon conditions within the body passageway; permits tissue of an elongated section of a body passageway to be supported by an elongated graft; and provides the necessary flexibility to negotiate the bends and curves in the vascular system.

(PX 1/API 1: '417 patent, col. 5, lns. 26-43) (emphasis added).

Although the commercial embodiment of the '655/'762 patents was available abroad in 1989, it was generally recognized that "because of its rigidity, it wasn't widely applicable to the coronary circulation." (D.I. 167 at 587) Indeed, in 1988 (when the application for the '417 patent was filed), there was widespread skepticism about the efficacy of stenting. [*8] (PX 378, 383) After the '417 patent application was filed and the commercial embodiment thereof was made available, n2 two randomized clinical trials were initiated in 1991, one in North America and one in Europe, to compare the clinical success of the Palmaz-Schatz stent with balloon angioplasty.

n2 Hereinafter referred to as the "Palmaz-Schatz" stent, described as "two rigid 7-mm slotted stainless steel tubes connected by a 1-mm central bridging stent." (PX 76 at 497)

The results of these trials, the Benestent trial in Europe and the STRESS trial in North America, were published in August 1994 and "demonstrated beyond reasonable doubt that stenting could improve upon the results of plain balloon angioplasty." (D.I. 167 at 591; see also PX 75, 76, 77, 78; API 159) The Palmaz-Schatz stent was introduced in the United States in the summer of 1994. Sales grew from 5,000 units per month in 1994 to a high of over 40,000 units per month in April/May of 1997. (D.I. 168 at 781)

The Benestent and STRESS trial results [*9] not only encouraged sales of the Palmaz-Schatz stent, they also fostered "a frenzy of activity . . . [in] the stent devel-

opment industry," leading to "[a] diverse variety of stents . . . becoming clinically available" internationally. (PX 379 at 888)

ACS's coronary stent project began in 1987. The basic design of the MULTI-LINK was finalized in 1990, and the first clinical experience with the MULTI-LINK was in 1994. (D.I. 169 at 1017, 1061-62) ACS initiated the FDA review process in July 1995 and in November, the MULTI-LINK was launched commercially on the international market. n3 (D.I. 169 at 1065, 1072-73) There followed during the years 1995-97 a series of clinical trials, culminating in the ASCENT trial, a "randomized, multicenter comparison of the ACS MULTI-LINK coronary system with the Palmaz-Schatz stent." (D.I. 169 at 1062-63; PX 257) As to the preselected primary, secondary, and tertiary end points, there were no statistically significant differences reported. (D.I. 166 at 346) The ASCENT trial proved, therefore, that the ACS MULTI-LINK coronary system was equivalent to the Palmaz-Schatz stent, as required for FDA approval. (D.I. 166 at 348, 353) In addition to the preselected [*10] primary, secondary, and tertiary end points, ACS has reported the results of 108 other comparisons using the ASCENT data, five of which had a P value of .05. n4 (D.I. 166 at 366-7)

n3 The MULTI-LINK has been manufactured domestically since 1995 and its development has been a matter of public record. (D.I. 169 at 1071-74)

n4 The confidence interval for the ASCENT trial was $P < .05$. As a matter of statistics, using a confidence interval of .05, if one conducts 100 comparisons and there is no difference between the groups being compared, one would expect to find five statistically significant differences due to chance alone. (D.I. 166 at 354-58) Nevertheless, one of the five comparisons involved the 30-day death rate and that result, while not statistically significant, has some clinical significance because doctors make decisions based upon such data. (D.I. 168 at 894-95)

ACS received FDA approval on October 2, 1997 and launched the MULTI-LINK commercially the next day. Since then, the MULTI-LINK has achieved [*11] in excess of 70% of the market n5 with a selling price equivalent to or above that of the Palmaz-Schatz stent. (D.I. 169 at 1021-22) Cordis' sales have responded to competitive launchings. For the period June and July of 1997, Cordis' monthly stent sales dropped from approximately 37,000 units to 25,000 units upon the release of two new products from Cook and Medtronic. n6

Cordis' monthly sales rebounded in August 1997 to approximately 33,000 sales per month and has declined since then to less than 10,000 units per month. (PX 536-A) Cordis' market share has dropped from 90-95% to 20 or 25%. (D.I. 168 at 794) The loss of market leadership generally involves not only lost sales, but a loss of reputation, declining morale, and less resources to devote to maintaining a technological edge. n7

n5 Some of ACS's initial share may be attributed to the fact that physicians to maintain their edge like to try new devices. (D.I. 168 at 790, 808, 929-30) In the event the United States stent market becomes fragmented as it is in Europe, it is Cordis' estimate that both it and ACS will achieve market shares "in the twenties." (D.I. 168 at 810-11) In terms of the size of the market, there is evidence that the market itself would grow due, inter alia, to the introduction of new products (including Cordis' new products) and changes in Medicaid reimbursement for stenting procedures. (D.I. 168 at 802-03, 924; D.I. 169 at 1024, 1040-42, 1054-55)

[*12]

n6 Cordis granted licenses to Cook and Medtronic due to its history of competing effectively against these companies and their products. (D.I. 168 at 790-93)

n7 Cordis represented that, as market leader, it had unique access to new ideas, thus giving it an edge in a "very strongly technology-driven marketplace" (D.I. 168 at 795-99), an edge it has allegedly lost since the commercial launch of the MULTI-LINK. The record demonstrates, however, that Cordis did not introduce any new technology into the stent market from 1994 (when the Palmaz-Schatz stent was commercially launched) until after the filing of this lawsuit. Although Dr. Buller praised this stability in design as helpful to the medical community (D.I. 167 at 622), it is somewhat inconsistent with Cordis' litigation position.

III. STANDARD OF REVIEW

[HN1] The framework for analyzing a request for injunctive relief at the preliminary stages of litigation rests upon two fundamental principles: a preliminary injunction constitutes extraordinary relief and the grant or de-

nial of such relief is within the discretion of the court. [*13] See generally, *Bell & Howell Document Management Products co. v. Altek Systems*, 132 F.3d 701, 704 (Fed. Cir. 1997). These underpinnings are not absolute, however, and the court's discretion "must be measured against the standards governing the issuance of an injunction." *Hybritech Inc. v. Abbott Laboratories*, 849 F.2d 1446, 1451 (Fed. Cir. 1988).

[HN2] To obtain a preliminary injunction pursuant to 35 U.S.C. § 283, a party must demonstrate that: 1) it has a reasonable likelihood of success on the merits; 2) it would suffer irreparable harm if the injunction were not granted; 3) the balance of relative hardships tips in its favor; and 4) an injunction would not have a negative impact on the public interest. See id.

These factors, taken individually, are not dispositive; rather, the district court must weigh and measure each factor against the other factors and against the form and magnitude of the relief requested.

Id.

IV. ANALYSIS

A. Likelihood of Success

It is Cordis' burden to demonstrate that, if this controversy were to be tried, Cordis would prevail in proving (by a preponderance of the evidence) that ACS is infringing the '417 patent and [*14] ACS would not successfully prove (by clear and convincing evidence) that the '417 patent is invalid. If Cordis "clearly establishe[s] a likelihood of success, it [is] entitled to a rebuttable presumption that it would be irreparably harmed if a preliminary injunction were not to issue." *Bell & Howell*, 132 F.3d at 705.

1. Literal Infringement

[HN3] Literal infringement involves a two-step determination: the proper construction of the asserted claims and a determination whether the claims as properly construed read on the accused product or method. See *id.* *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370, 134 L. Ed. 2d 577, 116 S. Ct. 1384 (1996).

[HN4] The principles of claim interpretation are well established in the law. The exercise begins always with the claim language, which defines the scope of the claim. See *York Prods., Inc. v. Central Tractor Farm & Family Center*, 99 F.3d 1568, 1572 (Fed. Cir. 1996). [HN5] In analyzing claim language, the court must em-

ploy "normal rules of syntax," *Eastman Kodak Co. v. Goodyear Tire & Rubber Co.*, 114 F.3d 1547, 1553 (Fed. Cir. 1997), for "[a] claim must be read in accordance [*15] with the precepts of English grammar." In *re Hyatt*, 708 F.2d 712, 714 (Fed. Cir. 1983). The court must ascribe to any technical term used in a claim "the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning." *Hoechst Celanese Corp. v. BP Chemicals Ltd.*, 78 F.3d 1575, 1578 (Fed. Cir. 1996).

[HN6] In order to give context to the claim language, the court must review as well the specification.

[HN7]

The specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication As we have repeatedly stated, "claims must be read in view of the specification, of which they are a part." . . . The specification contains a written description of the invention which must be clear and complete enough to enable those of ordinary skill in the art to make and use it. Thus, the specification is always relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.

Vitronics Corp. v. Conceptiontronic, Inc., [*16] 90 F.3d 1576, 1582 (Fed. Cir. 1996).

[HN8] The last source of intrinsic evidence relevant to claim interpretation is the prosecution history of the patent, if it has been made part of the record.

This history contains the complete record of all the proceedings before the Patent and Trademark Office, including any express representations made by the applicant regarding the scope of the claims. As such, the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims.

The claims, specification, and file history . . . constitute the public record of the patentee's claim, a record on which the public is entitled to rely. In other words, competitors are entitled to review the pub-

lic record, apply the established rules of claim construction, ascertain the scope of the patentee's claimed invention and, thus, design around the claimed invention.

Id. at 1583. [HN9] In order to further the "fair notice function of the requirement that the patentee distinctly claim the subject matter disclosed in the patent from which he can exclude others temporarily," *Athletic Alternatives, Inc. v. Prince Manufacturing, Inc.*, 73 F.3d [*17] 1573, 1581 (Fed. Cir. 1996), extrinsic evidence of claim interpretation, such as expert testimony, is not encouraged by the Federal Circuit. See, e.g., *Vitronics Corp.*, 90 F.3d at 1583.

a. Claim Construction

The claims at issue, claims 17 and 25 of the '417 patent, are a method claim and an apparatus claim, respectively. Claim 17 reads:

A method for expanding the lumen of a body passageway comprising the steps of:
connecting a plurality of intraluminal grafts by at least one flexible connector member disposed between adjacent grafts; inserting the plurality of connected intraluminal grafts, disposed upon a catheter, into the body passageway until the grafts are disposed adjacent a desired location within the body passageway; and expanding a portion of the catheter to provide controllable expansion of the intraluminal grafts radially, outwardly into contact with the body passageway, by deforming a portion of the intraluminal grafts with a force in excess of the elastic limit of the portion of the intraluminal grafts, until the lumen of the body passageway at the desired location in the body passageway has been expanded, whereby the intraluminal grafts prevent the [*18] body passageway from collapsing and decreasing the size of the expanded lumen, and the intraluminal grafts remain in the passageway.

(PX 1/API 1: '417 patent, col. 14, lns. 39-59) Claim 25 reads:

An expandable intraluminal vascular graft, comprising:
a plurality of thin-walled tubular members, each having first and second ends

and a wall surface disposed between the first and second ends, the wall surface having a substantially uniform thickness and a plurality of slots formed therein, the slots being disposed substantially parallel to the longitudinal axis of each tubular member;

at least one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members;

each tubular member having a first diameter which permits intraluminal delivery of the tubular members into a body passageway having a lumen; and

the tubular members having a second, expanded and deformed diameter, upon the application from the interior of the tubular members of a radially, outwardly extending force, which second diameter is variable and dependent upon the amount of force applied to the tubular members, whereby the tubular members may be expanded and [*19] deformed to expand the lumen of the body passageway.

(PX 1/API 1: '417 patent, col. 15, lns. 19-40)

At this preliminary stage of the proceedings, the parties have focused their contraventions on the following language: n8

17. A method for expanding the lumen of a body passageway comprising the steps of:

connecting a plurality of intraluminal grafts by at least one flexible connector member disposed between adjacent grafts; . . .

* * *

25. An expandable intraluminal vascular graft, comprising: . . .

at least one connector member being disposed between adjacent tubular members to flexibly connect adjacent tubular members; . . .

n8 The court notes that its claim construction is preliminary as well.

The first element in claim 17 that requires construction is the phrase "connecting a plurality of intraluminal grafts." To "connect" means to join or fasten together. Webster's II New College Dictionary (1995) at 239. A "plurality" means at least two. Webster's at 849. [*20] "Intraluminal" means within the inner open space of a tubular organ such as a blood vessel or other body passageway. Webster's at 581, 650. A "graft" is a structure that is "implanted . . . surgically . . . to compensate for a defect" in a body organ or tissue. Webster's at 483. Therefore, an "intraluminal graft" is a structure designed for use within the lumen of a body passageway to compensate for a defect in said passageway. (PX 1/API 1: '417 patent, col. 1, lns. 28-32; col. 6, lns. 23-54; col. 9, lns. 6-13) Neither the specification nor the claim language require that the intraluminal grafts be of any particular length; the court concludes, however, that each such "graft" must be functional, as would be expected in a method claim such as claim 17.

The next element in dispute in claim 17 is the phrase "by at least one flexible connector member disposed between adjacent grafts." "Flexible" means capable of being bent or flexed. Webster's at 427. A "connector member" is a structure disposed or particularly arranged between adjacent grafts in order to join them together. The word "flexible" clearly modifies the phrase "connector member." Although it is a purpose of the [*21] invention to describe an intraluminal graft "able to flexibly bend, or articulate, with respect to the longitudinal axis of [the] graft" (PX 1/API 1: '417 patent, col. 12, lns. 44-5), there is no requirement in the claim language that each individual graft be flexible, only that the connector member be flexible. This interpretation is consistent with the disputed language of claim 25, which more specifically requires that the connector member be particularly arranged "to flexibly connect" adjacent structures; again, it is the connector member and not the adjacent structures which must provide flexibility, as is the case with the Palmaz-Schatz stent.

Claim 25 is an apparatus claim which specifically describes an "expandable intraluminal vascular graft" as comprising at least two "thin-walled tubular members" "flexibly connected" by "at least one connector member." A "tubular member" is a structure that "has the form of a tube," i.e., is hollow and cylindrical in shape. Webster's at 1185. The claim further requires that each tubular member have two ends and a "wall surface" disposed or particularly arranged between the two ends, which "surface" has a "substantially uniform thickness" [*22] n9 and more than one slot arranged "substantially parallel to the longitudinal axis of each tubular member." There is no requirement that a tubular member be any certain length, so long as it is long enough to contain more than

one slot. A "slot" is "a long narrow groove, opening or notch." Webster's at 1039.

n9 The word "surface" describes "the exterior or outside of an object or body" or "a two-dimensional locus of points." Webster's Third International Dictionary (16th Ed. 1971) at 2300. Surfaces, therefore, generally do not have a thickness.

b. Infringement analysis

The MULTI-LINK is described in ACS literature as comprised of "12 rings linked by 33 articulations for flexibility" (PX 38); "a small latticed stainless steel tube" (PX 52-A); "cut from a tube for optimal radial strength [and having] 33 links for flexibility and conformability" (PX 63). The MULTI-LINK is the commercial embodiment of U.S. Patent No. 5,421,955 (the "955 patent"), which describes the stent of the invention as generally [*23] including

a plurality of radially expandable cylindrical elements which are relatively independent in their ability to expand and to flex relative to one another. The individual radially expandable cylindrical elements of the stent are dimensioned so as to be longitudinally shorter than their own diameters. Interconnecting elements or struts extending between adjacent cylindrical elements provide increased stability and are preferably positioned to prevent warping of the stent upon the expansion thereof. The resulting stent structure is a series of radially expandable cylindrical elements which are spaced longitudinally close enough so that small dissections in the wall of a body lumen may be pressed back into position against the luminal wall, but not so close as to compromise the longitudinal flexibility of the stent. The individual cylindrical elements may rotate slightly relative to adjacent cylindrical elements without significant deformation, cumulatively giving a stent which is flexible along its length and about its longitudinal axis but which is still very stiff in the radial direction in order to resist collapse.

(PX 46: '955 patent, col. 1, lns. 59-68; col. [*24] 2, lns. 1-12) Beverly Huss, Vice President of ACS' Business Unit, testified that the MULTI-LINK is composed of 12 rings. Each ring is approximately 1.2 millimeters in length. Adjacent rings are connected longitudinally by three links that are 120 degrees apart. Each ring is a "metal strut" defined by "W's and U's," "the center portion of the 'W' representing the link to the next adjacent ring." (D.I. 169 at 1077-78) According to Ms. Huss, "the function of the links is to keep the rings stable and positioned correctly relative to one another so that . . . the rings don't move generally out of the plane of the stent." (D.I. 169 at 1080) Ms. Huss testified that "bending primarily occurs in the 'U's' and 'W's.' If there is any bending in the links, it would be minimal." (D.I. 169 at 1082) Cordis' expert testified that, when he bent a MULTI-LINK and magnified the image, he observed that "the links were actually bending," not just the "W's" and "U's" of the rings. (D.I. 167 at 482; PX 519 A, B, C)

The court concludes that Cordis has not carried its burden of persuasion as to claim 17. Although the specification of the '417 patent on occasion uses interchangeably the phrases "grafts," "prostheses," [*25] and "tubular members" (see, e.g., PX 1/API 1: '417 patent, col. 12, lns. 41-45), the court has construed the phrase "intraluminal graft" in claim 17 as requiring that each graft be functional. n10 There is insufficient evidence of record from which the court could determine that each ring of the MULTI-LINK is a functional graft flexibly connected to another functional graft.

n10 The court recognizes that claims 17 and 25 do not use the term "graft" consistently but does not feel compelled at this juncture to reconcile the two uses of the term.

With respect to claim 25, rather than requiring a "flexible connector member," it requires that a "connector member . . . flexibly connect" adjacent tubular members. n11 While the **primary** function of the 33 links of the MULTI-LINK may not be to "flexibly connect," they do connect; furthermore, they do display some flexibility and have been described by ACS as providing flexibility. Therefore, the court concludes that Cordis has carried its burden of proof with [*26] respect to claim 25 on literal infringement. n12

n11 In claim 17, the word "flexible" is an adjective; in claim 25, it is an adverb describing a function.

n12 After the close of evidence, ACS submitted Cordis documents characterizing competi-

tive stents as "coil," "hybrid," or "tube." The Palmaz-Schatz stent was characterized as a "tube" stent; the MULTI-LINK was described as a "hybrid." This evidence may be relevant to an infringement analysis at trial. Given the court's decision at bar, however, the documents were not considered presently. (D.I. 268)

2. Validity

ACS challenges the validity of the '417 patent under various theories, n13 including obviousness under 35 U.S.C. § 103 and failure to disclose the best mode pursuant to 35 U.S.C. § 112 para. 1.

n13 As an initial matter, ACS asserts that the invention of the '417 patent is being challenged in various forums. More specifically, the related '762 patent is being reexamined by the Patent Office and various foreign counterparts to the '417 patent recently have been held invalid for obviousness. (See D.I. 62; D.I. 268)

[*27]

[HN10] Under 35 U.S.C. § 103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

The Supreme Court has stated that [HN11] the obviousness determination

lends itself to several basic factual inquiries. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this backdrop, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Graham v. John Deere Co., 383 U.S. 1, 17-18, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966). Thus, [HN12] the factual inquiries relevant to the obviousness [*28] inquiry include: (1) the level of skill in the pertinent art; (2) the scope and content of the prior art as viewed through the eyes of the skilled artisan at the time of the invention; (3) the differences between the claimed invention and the prior art; and (4) relevant secondary considerations.

Included within the scope of the prior art at bar are the inventions of the related '762 and '665 patents (i.e., slotted tube grafts and tubular members), as well as several articles appearing in the publication Radiology. In an article published in the July 1985 volume of Radiology, Dr. Palmaz and others recognized that the problematic lack of longitudinal flexibility in the current graft design could be solved "by using shorter grafts or grafts in tandem." (API 33 at 76) The February and November 1986 volumes of Radiology featured articles co-authored by Dr. Cesare Gianturco. These articles concern self-expanding "Z" (for "zig-zag") stents connected by a wire strut, described as "allowing a greater expansible force than a single long stent and providing better stabilization during release." (API 72 at 296; API 295)

The court agrees with Cordis that the **primary** function [*29] of the wire strut connecting adjacent Z stents was **not** to provide flexibility. Consistent with the court's infringement analysis, however, the wire strut unquestionably served as a connector member and (as with most wire) was at least somewhat flexible. n14 The court concludes, therefore, that Cordis has not carried its burden of persuasion that it could withstand a challenge to the validity of the '417 patent in light of the Gianturco prior art, in combination with the '762 and '665 patents and Dr. Palmaz's 1985 article. n15

n14 See, e.g., API 313 at 20, where Cordis' representative describes the Gianturco prior art as exhibiting flexibility:

If a wire strut looks like a hinge made of wire, flexes like a hinge made of wire, and is made of the same size wire, it is a hinge made of wire.

n15 Given this finding, the court will not address the § 102 challenge.

B. Irreparable Harm

Given the above findings, Cordis has not clearly established a likelihood of success on the merits and, [*30] therefore, is not entitled to a rebuttable presumption that it will be irreparably harmed if an injunction does not issue. Nevertheless, the court is mindful of the presumption of validity that inheres to the '417 patent and the court's obligation to protect the integrity of the patent system against a business mentality which places more value on obtaining market share than on honoring a competitor's intellectual property. n16 There is no question but that allowing the MULTI-LINK to remain on the market will have adverse consequences on Cordis, including lost sales, loss of market share, tarnished reputation, diminished morale, and a negative impact on Cordis' ability to attract both dollars and ideas to maintain a competitive edge technologically. To a great extent these "harms" can be addressed by money damages. If an injunction does not issue and ACS is allowed to compete in the United States market, the court finds that ACS will be able to redress the economic harms caused by such competition should Cordis ultimately prevail at trial. (D.I. 169 at 1264-84)

n16 It is somewhat perplexing and surely disappointing to the court that neither party sought declaratory relief prior to the commercial launch of the MULTI-LINK, despite knowledge of the product, of the market impact, and of the inevitability of a lawsuit.

[*31]

C. Balance of Hardships

The court concludes that Cordis has demonstrated that it will be harmed more if an injunction does not issue than will ACS if an injunction does issue. Until October 1997, ACS had no income from its sale of the MULTI-LINK in the United States. To enjoin its activity is to re-establish the status quo circa October 2, 1997. Cordis, on the other hand, has sustained substantial

losses which will not be recouped, if at all, for months. Moreover, Cordis still stands in the position of the owner of a valid patent.

D. Public Interest

The parties have devoted a great deal of their attention to the question of whether the public suffers more when efficacious medical devices n17 are taken off the market (through, e.g., an injunction) or when efficacious medical devices never make it to the market in the first instance because the incentives offered by patent protection are no longer viable. Although the court suspects that much of this tension is generated by money-driven business decisions and not the public interest, the court concludes under the circumstances at bar that the public would be better served if an injunction did not issue.

n17 There is no doubt that the MULTI-LINK is a useful product preferred by some physicians and which, like the Palmaz-Schatz stent, may be better suited to some medical circumstances than its competitors. The court is not inclined to make a judicial determination, however, that the MULTI-LINK is "a better stent" than the Palmaz-Schatz stent on the record presented.

[*32]

V. CONCLUSION

It is the court's responsibility to weigh and measure each of the four factors deemed relevant to a preliminary injunction analysis against the other factors and against the form and magnitude of the relief requested. Having done so, the court concludes that the weight of the evidence does not support Cordis' request for injunctive relief. Mindful that a different judicial officer could well conclude otherwise, the court shall make every effort to expedite trial on the merits so as to minimize the impact of this decision.

US District Court Civil Docket**U.S. District - Delaware
(Wilmington)****1:98cv65****Cordis Corporation, et al v. Advanced Cardio Sys, et al****This case was retrieved from the court on Wednesday, August 24, 2005**

Date Filed: 02/06/1998	Class Code: CLOSED, PATENT
Assigned To: Honorable Sue L Robinson	Closed: yes
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Nature of suit: Patent (830)	Jury Demand: Plaintiff
Cause: Patent Infringement	Demand Amount: \$0
Lead Docket: None	NOS Description: Patent
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Date	#	Proceeding Text
02/06/1998	1	COMPLAINT filed; Mag consent notice to pltf. FILING FEE \$ 150.00 RECEIPT # 119764 (els) (Entered: 02/09/1998)
02/06/1998	--	SUMMONS(ES) issued for Advanced Cardio Sys, Guidant Corporation, Arterial Vascular, Boston Scientific, Scimed Life Systems (els) (Entered: 02/09/1998)
02/06/1998	--	DEMAND for jury trial by Cordis Corporation, Expandable Grafts (els) (Entered: 02/09/1998)
02/06/1998	2	Report to Commissioner of Patents and Trademarks. Exit original. (els) (Entered: 02/09/1998)
02/06/1998	3	MOTION by Cordis Corporation, Expandable Grafts for Preliminary Injunction against Guidant Corp. Advanced Cardiovascular Sys. and Arterial Vascular Engineering, Inc. Answer Brief due 2/20/98 re: [3-1] motion. (Exit Duty Judge RRM) (els) (Entered: 02/09/1998)
02/18/1998	4	CASE assigned to Judge Sue L. Robinson . Notice to all parties. (ntl) (Entered: 02/18/1998)
03/10/1998	5	RETURN OF SERVICE executed as to Guidant Corporation 3/5/98 Answer due on 3/25/98 for Guidant Corporation (lf) (Entered: 03/11/1998)
03/10/1998	6	RETURN OF SERVICE executed as to Advanced Cardio Sys 3/5/98 Answer due on 3/25/98 for Advanced Cardio Sys (lf) (Entered: 03/16/1998)
03/19/1998	7	STIPULATION with proposed order; Deft to answer to the complaint by 3/31/98 (lf) (Entered: 03/19/1998)
03/23/1998	--	So Ordered granting [7-1] stipulation (signed by Judge Sue L. Robinson) Notice to all parties. (lf) (Entered: 03/24/1998)
04/14/1998	--	Consolidated Member Case . Lead Case Number: 1:97cv550 (lf) (Entered: 04/14/1998)
06/13/2002	8	NOTICE OF APPEAL by Cordis Corporation . Time: 4:06 Fee Status: unpaid Appeal record due on 7/15/02 (paid in lead case 97-550-SLR). (rld) (Entered: 06/14/2002)
03/31/2005	--	CASE CLOSED as it is the member case to 97-550-SLR, closed by jgm. issued on 3/31/05 per jury verdicts of March 14 and 24, 2005 found in Civ. No. 97-550-SLR. (rld,) (Entered: 03/31/2005)

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